1074.

SUPREME COURT OF THE UNITED STATES.

No. 147.

SAMUEL L. FORGAY AND ELIZA ANN FOGARTY, WIFE OF E. W. WELLS, APPELLANTS,

vs.

FRANCIS B. CONRAD, ASSIGNEE OF THOS. BANKS.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Bill of complaint	1	2
Exhibit A	49	22
B	54	25
C	60	27
D	64	29
E	71	33
F	76	35
G	80	37
H	87	41
I	93	44
K	96	45
Consent and do L	100	48
Subpœnas and marshal's returns	103	49
Answer of Fogarty, Wells, and Forgay	105	50
Do of Banks, Whitla, Robertson, and Allan	115	55
Replication	122	58
Testimony	123	59
Notice for appointment of receiver, int'y decree and order appointing receiver	150	77
Agreement	211	107
Testimony	212	108
Extract from record of district court in case of City Bank of N. Orleans, vs. T. Banks, offered by complainant	262	134
Transcript from supreme court, offered by defendant	304	158
Plea of prescription	370	194
Orders of court	370	194
Replication to amended answer	372	195
Order of submission	372	195
Final decree	373	195
Petition of appeal	377	197
Order granting appeal	378	198
Appeal bond	379	198
Certificates of clerk and judge	381	199

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FRANCIS B. CONRAD, assignee of Thomas Banks, complainant,
versus
ANN FOGARTY, otherwise called Ann Wells, wife of Edward W. Wells, and the said Edward W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, f. m. c., and George Allan, defendants.
} In chancery.—No. 1,243.

Pleas and proceedings before the honorable Theodore H. McCaleb, district judge of the United States, in and for the district of Louisiana, and one of judges of the circuit court of the United States, in and for the fifth circuit and district aforesaid, at a circuit court of the United States, in and for the fifth circuit and district of Louisiana, begun and held at the court room of said court, in the city of New Orleans, in said district, on the thirteenth day of April, A. D. one thousand eight hundred and forty-six.

Be it remembered, that heretofore, to wit, on the sixth day of April, A. D. 1844, came the complainant, Francis B. Conrad, assignee of Thomas Banks, by his solicitors, Lockett & Micou, and Richard Henry Wilde, esq'rs, and filed, in the clerk's office of said court, his bill of complaint against the defendants, Ann Wells, wife of Edward W. Wells, and the said Edward W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, f. m. c., and George Allan, which bill of complaint is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana.

Francis B. Conrad, of the city of New Orleans, a citizen of the State of Louisiana, resident therein, assignee of Thomas Banks, a bankrupt, brings this suit against Ann Fogarty, formerly widow of Henry Hutton, and now the wife of Edward W Wells, her husband, Samuel L. Forgay, George Allan, Thomas Banks, William Whitla, and William Robertson, a free man of color; which said Ann Fogarty, Edward W. Wells, Samuel L. Forgay, George Allain, Thomas Banks, William Whitla, and William Robertson, are all of the city of New Orleans, and citizens of the State of Louisiana, residing therein.

And thereupon your orator complains and says, that Thomas Banks aforesaid, of the city of New Orleans, then, and still being, a citizen of the State of Louisiana, and resident of the eastern district thereof, heretofore, to wit, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-two, filed his petition in the district

court of the United States, for the eastern district of the State of Louisiana, sitting as a bankrupt court, and holding summary jurisdiction in cases of bankruptcy, and thereby prayed to be declared a bankrupt, under and by virtue of the act of Congress entitled An act to establish a uniform system of bankruptcy throughout the United States, approved the nineteenth day of August, in the year of our Lord eighteen hundred and forty-one, and setting forth a list of his creditors, and an inventory of his property, rights, and credits; whereupon, such proceedings were had in the court last aforesaid, that the said Thomas Banks was declared bankrupt in due form of law, by decree of the said court, rendered and filed on the day of , in the year of our Lord eighteen hundred and forty- , and your orator was duly and lawfully appointed assignee of his estate; all of which will more fully and at large appear, by a copy of the said petition, decree, and order of appointment filed herewith, and marked exhibit (A;) which said proceedings in bankruptcy are still pending in the said court, and not finally settled, closed, or determined.

And your orator shows unto your honors, that the said Thomas Banks, shortly before filing his said petition, to wit, on the second day of May, in the year of our Lord eighteen hundred and forty-two, made unto the said Ann Fogarty, otherwise called Ann Wells, wife of the said Edmond W. Wells, a voluntary gift, or gratuitous donation, of two lots of ground in the suburb Saulet, of the said city of New Orleans, in the square bounded by Nayades, Clio, Prytanée, and Calliope streets, and designated by the numbers one and two, on a certain plan drawn by Charles F. Zimpell, deputy surveyor general, under date of the eighth day of April, in the year of our Lord eighteen hundred and thirty-five, and deposited in the office of William Christy, a notary public of the said city, for reference; and also of three slaves for life, to wit, Maria, Ben, and Mary, the whole by public act, before Joseph B. Marks, a notary public, in and for the city and parish of New Orleans, bearing date the second day of May, 1842, an authenticated copy whereof, marked exhibit B, is herewith filed; wherein and whereby an exact and complete description of the said lots and slaves will more fully and at large appear.

And your orator further shows unto your honors, that the said gift or donation plainly and manifestly purports, by the very terms of the act or deed making the same, to be purely gratuitous, and in consideration merely of natural love and affection, and the same was made less than ninety days before the bankruptcy of the said Thomas Banks, and at a time when the said Thomas was in failing or insolvent circumstances; and your orator is advised, and verily believes, and so expressly states, that the said gift or donation is fraudulent, null, and void, as well under the law of Louisiana, as under said act of Congress, the same not being made *bona fide* and for a valuable consideration, but voluntarily, gratuitously, and without any consideration other than natural love and affection; and being made moreover in fraud of the rights of creditors, at a time when the said Thomas Banks was unable to pay his debts, or

in contemplation of bankruptcy; for some one or more, or all of which reasons, your orator alleges that the said gift or donation was, and is, fraudulent and void, at law and in equity, as against the creditors of the said Thomas Banks, and will be declared fraudulent, null, and void by this court, and the estate and effects therein and thereby attempted to be conveyed, decreed to belong to the estate of the said Thomas Banks, and to be distributed among his creditors according to the said act of Congress.

And your orator shows unto your honors, that the said Edmond W. Wells, the husband of the said Ann Fogarty, was likewise declared a bankrupt by decree of the said district court, passed, rendered, and filed on the twentieth day of June, in the year of our Lord eighteen hundred and forty-two; and that the said Ann Fogarty afterwards, and also after the bankruptcy of the said Thomas Banks, to wit, on the seventeenth day of July, in the year of our Lord eighteen hundred and forty-three, by and with the authorization of her said husband, made a simulated sale of the aforesaid lots and slaves to the aforesaid Samuel L. Forgay, by public act of that date before William Christy, notary public for the said city and parish of New Orleans, an authentic copy whereof is herewith filed, marked exhibit C.

And your orator alleges, that the said sale was simulated, false, feigned, covinous, and fraudulent, as well on the part of the said Samuel L. Forgay, as that on the part of the said Ann Fogarty and her said husband; that the same was made without any valuable consideration whatever proceeding from the said Samuel L. Forgay to the said Ann Fogarty, otherwise called Ann Wells, and upon some secret trust or confidence, manifested by a counter letter given by the said Samuel L. Forgay, or by some obligation, contract, or agreement, written or verbal, express, implied, or understood, entered into by him, or otherwise contrived and existing between the parties, for the purpose of more effectually securing the use and benefit of the said lots of land and slaves to the said Thomas Banks, or to the said Ann Fogarty, otherwise called Ann Wells, under and by virtue of the said gratuitous gift or donation, so made to her of the same, by the said Thomas Banks, as hereinbefore set forth; and that the said simulated sale, from the said Ann Fogarty, otherwise Ann Wells, to the said Samuel L. Forgay, was made with intent to hinder, delay, and defraud the creditors of the said Thomas Banks, and is utterly fraudulent, null, and void, at law and in equity. And if the said Samuel L. Forgay shall pretend that he is a purchaser for a valuable consideration, your orator avers, that if there was any such consideration, the same was merely nominal, colorable, and wholly inadequate and illusory, and intended only to cover and conceal a fraudulent transaction; that the said consideration proceeded entirely, principally, or in part, from the said Thomas Banks, or from lands or tenements, goods or chattels, rights and credits, or some one or more of them, to him, the said Thomas Banks, before that time belonging and appertaining, and fraudulently concealed, transferred, or made over, for his own use and benefit, or for the use and benefit of

some one else by him appointed, to the prejudice and in fraud of his creditors, and contrary to law.

And your orator avers, that the said Samuel L. Forgay, before and at the time of the said simulated sale, and before and at the time of the bankruptcy of the said Thomas Banks, and of the bankruptcy of the said Edmund W. Wells, resided in the city of New Orleans; at the time of the execution of the said act of simulated sale had full knowledge and notice of the said bankruptcies, and of the nullity of the said gratuitous gift or donation from the said Thomas Banks to the said Ann Fogarty, otherwise called Ann Wells, and of the defects of his own title, or pretended title, so acquired as aforesaid, and can in no wise be regarded as an innocent or bona fide purchaser for a valuable consideration, without notice; but is a possessor in bad faith by a fraudulent title, and liable to all charges and consequences imposed by law on such possessors.

And your orator further shows unto your honors, that, since the bankruptcy of the said Edmund W. Wells, and since the bankruptcy of the said Thomas Banks, to wit, during the summer or autumn of the year of our Lord eighteen hundred and forty-three, a large double two story brick dwelling house, and out buildings, of the value of ten thousand dollars, or other large sum, have been erected on the lots aforesaid by Robert Seaton, master builder, under a simulated contract or agreement for the erection of the same, ostensibly made and entered into by and in the name of the said Samuel L. Forgay, but in reality for the use, benefit, and advantage of the said Thomas Banks, or the said Ann Fogarty, otherwise called Ann Wells, or of some person or persons by them, or one of them, appointed, or to be appointed, or in and upon some secret trust and confidence, written or verbal, express or implied, to secure the use and benefit and advantage thereof to them, or one of them, in fraud of the creditors of the said Thomas Banks. And your orator avers, that the whole, or the greater part of the consideration given for erecting the said double two story brick dwelling and out houses, was in reality paid by the said Thomas Banks, or proceeded from him, or from his estate, in fraud of his creditors, or from lands and tenements, goods and chattels, rights and credits, or some one or more of them, to him, the said Thomas Banks, before that time belonging and appertaining, and by him fraudulently concealed, transferred or made over, upon some secret trust and confidence, written or verbal, express or implied, for his own use and benefit, or for the use and benefit of some one by him appointed, or to be appointed, to the prejudice, and in fraud of his creditors, and contrary to law.

And for a further, more exact, and complete statement of the mode and manner in which the said fraud was in part effected, your orator sheweth unto your honors, that on the twenty-seventh day of July, in the year of our Lord eighteen hundred and forty-two, only three days before the said Thomas Banks filed his petition for the benefit of the bankrupt act, a certain square of land, number twenty-six, situated in fauxburg Livaudais, parish of Jefferson, and State of Louisiana, was

conveyed to the said Samuel L. Forgay by one William Florance, by act of that date, before Adolphe Mazureau, notary public for the city and parish of New Orleans, an authentic copy whereof is herewith filed and marked exhibit D.

That the said sale, so far as regards the said William Florance, was in good faith; but, as it respects the said Samuel L. Forgay, the purchase was made for the use and benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed, and with the funds of the said Thomas, or with effects, rights, and credits, to him before that time belonging, and fraudulently transferred, assigned, and set over, with intent to hinder, delay, and defraud his creditors; that the said Samuel L. Forgay had no real interest therein, but merely lent his name to cover and conceal the fraud; that a large part of the consideration of the said purchase was paid in rent notes, given before that time to the said Thomas Banks, by divers of his tenants, for the rent of divers tenements then to him belonging, and especially in a note drawn by P. P. Rea for eight hundred and thirty-three dollars and thirty-three cents, a note drawn by John S. Pritchard for six hundred and eighty-three dollars and thirty-three cents, a note drawn by Patsey Shall for three thousand one hundred and twenty-five dollars, and a note drawn by William Whitmarsh for four hundred dollars; which said several notes are all more particularly described in the said act of sale marked exhibit D, and were then the property of the said Thomas Banks, or held upon some secret trust and confidence for him, or for his use and benefit, or for the use and benefit of some person or persons by him appointed by a gratuitous title, or to be appointed, and with intent to delay, hinder, and defraud his creditors, or in contemplation of bankruptcy. That the consideration of the said sales, as expressed in the said act, was thirteen thousand dollars; whereof five thousand and forty-one dollars and sixty-six cents were paid in the said notes, as in and by the said act manifestly appears, and the remaining seven thousand nine hundred and fifty-eight dollars and thirty-four cents were paid in three promissory notes, drawn by the said Samuel L. Forgay, and endorsed by the said Edmond W. Wells and the said Thomas Banks, each note being for the sum of two thousand six hundred and fifty-two dollars and seventy-eight cents, bearing mortgage on the said property by the terms of the said act of sale; all of which said notes have since been paid and taken up out of the proceeds of the property thus acquired, as will be hereinafter more fully stated and set forth; the said Samuel Forgay contributing nothing of his own proper funds to the payment or satisfaction of the same. That after the bankruptcy of the said Thomas Banks, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty-*three*, the said square of land in suburb Livaudais was sold by the said Samuel Forgay, by and with the contrivance, assent, and concurrence of the said Thomas Banks, to one Persifor F. Smith, for the price or sum of twelve thousand dollars, by act before Hilary B. Cenas, notary public for the city and par-

ish of New Orleans, an authentic copy whereof is herewith filed, marked exhibit E.

That the said act of sale, so far as regards the said Persifor F. Smith, was in good faith; but as it respects the said Samuel L. Forgay, the same was made in further contrivance and execution of the false, fraudulent, and covinous agreement, understanding, and contrivance, between the said Samuel L. Forgay and the said Thomas Banks, to cover and conceal the property of the said Thomas, and to hinder, delay, and defraud his creditors. That the consideration of twelve thousand dollars, in the said act of sale mentioned, is therein expressly declared to have been paid as follows: Three hundred and forty-seven dollars and twenty-two cents in money, and three thousand six hundred and ninety-four dollars and forty-four cents in the promissory note of the said Persifor F. Smith, dated the twenty-seventh day of May, in the year of our Lord eighteen hundred and forty-three, drawn to the order of, and endorsed by, the said Samuel L. Forgay, and payable on the fifteenth of November, in the year of our Lord one thousand eight hundred and forty-four; and, in payment and liquidation of the balance, the said Persifor F. Smith assumed the payment of the three promissory notes of two thousand six hundred and fifty-two dollars seventy-eight cents each, before that time given by the said Samuel L. Forgay, and endorsed by the said Wells and the said Banks, at the time and upon the purchase of the same property as hereinbefore set forth.

And your orator shows unto your honors, that the promissory note of the said Persifor F. Smith for three thousand six hundred and ninety-four dollars forty-four cents, so proceeding and arising from and out of the said property so purchased with the rent notes and funds of the said Thomas Banks, was afterwards assigned, transferred, pledged, or given, by the said Samuel L. Forgay, by and with the assent, concurrence, and connivance of the said Thomas Banks, to the said Robert Seaton, the architect and contractor who erected the said double two story brick dwelling, with out houses, upon the lots on Nyades and Calliope streets, before that time gratuitously donated by the said Thomas Banks to the said Ann Fogarty, otherwise called Ann Wells, and by the said Ann conveyed by a simulated and fraudulent act of sale to the said Samuel L. Forgay, as will more fully appear by a public act of mortgage and pledge from the said Samuel L. Forgay to the said Robert Seaton, before Hilary B. Cenas, notary public for the city and parish of New Orleans, dated the seventh of December, in the year of our Lord one thousand eight hundred and forty-three, an authentic copy whereof is herewith filed, marked exhibit F.

And your orator further showeth unto your honors, that as soon as the double two-story brick dwelling house and out houses, thus erected as aforesaid upon the lots aforesaid so by the said Thomas Banks gratuitously donated to the said Ann Fogarty, otherwise called Ann Wells, and by her conveyed, by a simulated and fraudulent sale, to the said Samuel L. Forgay, were completed, the said Ann and her said husband moved into and occupied, and still occupy the same, under color

and pretence of being tenants to the said Samuel L. Forgay, but, in reality, under the said false, fraudulent, and covinous contrivance, agreement and understanding, verbal or written, express or implied, by and between the said parties, or some other of the like kind, made for the purpose of covering and concealing property of the said Thomas Banks, and to hinder, and delay, and defraud his creditors.

And your orator also shews unto your honors, that the three slaves, Maria, Ben, and Mary, so as aforesaid gratuitously donated by the said Thomas Banks to the said Ann Fogarty, otherwise called Ann Wells, and by her conveyed by simulated and fraudulent sale to the said Samuel L. Forgay, have been allowed by the said Samuel L. Forgay to continue in the possession, at the disposition, and under the control of the said Ann, where they still remain.

And your orator further sheweth unto your honors, that if the said Samuel L. and Ann shall pretend that the said sale of the lots and slaves aforesaid, by the said Ann to the said Samuel L., was not simulated, but bona fide, for a full and valuable consideration, without notice, and that the said Samuel L. possesses in good faith by a just title, and cannot be disturbed, which your orator in no wise admits, but expressly and distinctly avers to be contrary to the truth, then your orator alleges and insists, that the said Ann Fogarty, otherwise called Ann Wells, is liable, and must account to your orator for the proceeds of the said sale, which she received from the said Samuel L. Forgay, or so much, and such parts thereof, as justly and honestly belonged to the estate of the said bankrupt, Thomas Banks.

And your orator further shows unto your honors, that shortly before the bankruptcy of the said Thomas Banks, and while he was unable to pay his debts, and in failing or insolvent circumstances, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-two, he, the said Thomas Banks, by act of that date before Joseph B. Marks, notary public for the city and parish of New Orleans, conveyed to William Robertson aforesaid, a free man of color, a certain piece of ground, with the buildings and improvements thereon, situate in the suburb Delord of the city of New Orleans, in the square comprised within St. Paul, Girod, and St. Peter streets, and Julia street landing, measuring eighty-five front on St. Paul street, by one hundred and twenty-nine feet six inches in depth on the side nearest Girod street, one hundred and twenty-nine feet eight inches in depth on the side nearest Julia street landing, and eighty-five feet width in the rear; which portion of ground is composed of the whole of lots number one hundred and fifty-five and one hundred and fifty-six, and thirty-five feet from the rear of lots number one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, and one hundred and fifty-four, on the original plan drawn by L. Delafield, captain of engineers, in March, of the year one thousand eight hundred and thirty-two, and deposited in the office of G. R. Stringer, late notary, now that of Felix Grima, a notary public of the city of New Orleans; all of which will more fully appear by an authentic copy

of the said act from the said Thomas Banks to the said William Robertson, free man of color, herewith filed, and marked exhibit G.

That the consideration expressed in the said act as that upon which the same was made, is ten thousand dollars, secured by twelve promissory notes for the sum of eight hundred and thirty-three dollars and thirty-three cents each, drawn by the said William Robertson to his own order, and by him endorsed, bearing mortgage on the said property.

But your orator avers, that although the said lots, with the improvements thereon, are really of the value of ten thousand dollars and upwards, the said sale was false, fraudulent, covinous, and simulated, and made without any valuable consideration whatever; that the said William Robertson, free man of color, was in poor or indigent circumstances, and utterly unable to pay for property to that amount; that the whole transaction was false, feigned, fraudulent, covinous, and simulated, as well on the part of the said William Robertson, as that of the said Thomas Banks, and contrived, designed, and intended to hinder, delay, and defraud the creditors of the said Thomas Banks, or to cover and conceal property of his from them, to and upon some secret trust and confidence, written or verbal, express or implied, for his use and benefit, or for the use and benefit of some one by him appointed or to be appointed, to the prejudice and in fraud of his creditors, and contrary to law.

And your orator further sheweth unto your honors, that shortly before the bankruptcy of the said Thomas Banks, to wit, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, while he, the *the* said Thomas Banks, was unabled to pay his debts, and in failing or insolvent circumstances, he, the said Thomas Banks, by act of that date, before Joseph B. Marks, notary public, as aforesaid, conveyed to William Whitla aforesaid, two certain lots of ground, together with all the improvements thereon, situated in the suburb De Lord, of the parish of New Orleans, and forming part of the tract of land purchased by the New Orleans Canal and Banking Company from Mrs. Louise De Lord Sarpy, wife of Dominique François Bruthe, by act passed before G. R. Stringer, late a notary public in this city, on the twenty-fifth of May, eighteen hundred and thirty-one, and designated by the numbers three hundred and twenty-nine and three hundred and thirty, on a plan drawn by R. Delafield, captain of engineers and engineer of said company, dated in March, eighteen hundred and thirty-two, and deposited in the office of said G. R. Stringer, (now that of Felix Grima, notary,) said lots adjoin each other and measure together eighty-five feet front on Covington landing, twenty-seven feet front on Pensacola landing, by a depth of one hundred and ninety-six feet, and about fifty feet width in the rear; all of which will more fully appear by an authentic copy of the said act herewith filed, and marked exhibit H.

That the consideration expressed in the said act, as that upon which the same was made, is the price or sum of seven thousand dollars, secured by three promissory notes of the said William Whitla, for the sum

of twenty-three hundred and thirty-three dollars thirty-three and one third cents each, dated on the same day with said act, drawn to his own order and by him endorsed, and payable one, two, and three years after date, with interest at ten per cent., if not punctually paid, and bearing mortgage on the said property ; but your orator sheweth unto your honors that although the said lots and improvements were really of the value of seven thousand dollars and upwards, the said sale was false, feigned, fraudulent, covinous, and simulated, and made without any valuable consideration whatever; that the said William Whitla was a journeyman carpenter, in poor or indigent circumstances, and utterly unable to pay for a property of that amount ; that the whole transaction was false, feigned, fraudulent, covinous, and simulated, as well on the part of the said William Whitla, as that of the said Thomas Banks, and contrived, designed, and intended to hinder, delay, and defraud the creditors of the said Thomas Banks, or to cover and conceal property of his from them, and upon some secret trust and confidence, written or verbal, express or implied, to hold or secure the same for the use and benefit of the said Thomas Banks, or for the use and benefit of some one by him appointed, or to be appointed, to the prejudice, and in fraud of his creditors, and contrary to law.

And your orator further shews unto your honors, that the better to carry on and more effectually execute and consummate the said false, feigned, fraudulent, and covinous agreement or understanding, written or verbal, express or implied, between the said Thomas Banks and William Whitla, above stated and set forth, the said William Whitla, by and with the assent, concurrence, and contrivance of the said Thomas Banks, on the eighteenth day of April, in the year of our Lord eighteen hundred and forty-three, by act of that date, before Joseph B. Marks, notary public for the city and parish of New Orleans, made a simulated sale of the said lots of ground hereinbefore last described and set forth, to the aforesaid George Allan, as will more fully appear by a copy of the same, duly authenticated, and herewith filed, marked exhibit I.

That the consideration of the said conveyance, as set forth in the said act, was the price or sum of seven thousand dollars, in payment of which he, the said George Allan, in and by the said act agreed to assume, and did assume, to pay the three promissory notes before that time given by the said William Whitla to the said Thomas Banks, as hereinbefore stated, and in the said act of sale last mentioned particularly set forth. But your orator shows unto your honor, that although the said lots were really and truly of the value of seven thousand dollars and upwards, the said sale or pretended sale was simulated, false, fraudulent, and covinous, without any valuable consideration whatever, passing from the said George Allan to the said William Whitla ; that the said William Whitla was a journeyman carpenter, and the said George Allan was employed in the gas works of the Gas Company of New Orleans, at an annual salary of eighteen hundred dollars, in the business of fitting and laying pipes for gas; that the said George Allan's circumstances are contracted, and having a family to support out of his salary, which is

his chief or only means of subsistence, he following no other occupation, and his duties aforesaid requiring all his time, he, the said George Allan, was and is utterly unable to acquire and pay for a property of this description and amount; that the whole transaction was false, feigned, covinous, fraudulent, and simulated, as well on the part of the said George Allan as upon that of the said William Whitla, and that the same was designed, contrived, and intended in furtherance and execution of the fraudulent and covinous devices and subterfuges of the said Thomas Banks, and by and with his concurrence and connivance, for the purpose of hindering, delaying, and defrauding his creditors, or for the purpose of covering and concealing property of his from them, and upon some secret trust and confidence, written or verbal, express or implied, that the property so conveyed by simulated acts of sale from said Banks to said Whitla, and from said Whitla to said Allan, should be held or secured for the use and benefit of the said Thomas Banks, or of some person or persons by him appointed or to be appointed, to the prejudice of his creditors, fraudulently and contrary to law.

And your orator further sheweth unto your honors, that shortly before the bankruptcy of the said Thomas Banks, and while he was unable to pay his debts, and in failing or insolvent circumstances, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and forty-two, by act of that date, before Joseph B. Marks, notary public for the city and parish of New Orleans, conveyed to George Allan aforesaid, two lots of ground, lying and being on the batture in front of suburb Livaudais, parish of Jefferson, in the State of Louisiana, and designated by the letters A C and A D on the original plan of said suburb, deposited in the office of G. R. Stringer, late a notary public in the city of New Orleans, (now that of Felix Grima,) in the square comprised within Washington, Sixth, Levee, and New Orleans streets; said lots having, English measure, each forty-six feet front on Levee, between Washington and Sixth streets, and having in front forty-four feet nine inches and six lines, the depth of said lot A C, from Levee street to the river, being two hundred and fifteen feet, and the depth of the lot A D, on the side where it joins said lot A C, being two hundred and fifteen feet, and on the side where it adjoins A E two hundred and fifteen feet six inches, as will more fully appear by the said act whereof an authentic copy is herewith filed, and marked Exhibit K.

That the consideration of the said conveyance, as stated and expressed in the said act, was ten thousand dollars, secured to be paid by three several promissory notes for the sum of three thousand three hundred and thirty-three dollars and thirty-three and one-third cents each, all bearing even date with the said last mentioned act, drawn to the order of the said vendor, and payable respectively at one, two, and three years after date, with interest thereon from maturity, at the rate of ten per cent. per annum, with mortgage bearing upon the property.

But your orator sheweth unto your honors that, although the said lots and premises were really of the value of ten thousand dollars and

upwards, the said sale was false, fraudulent, covinous, and simulated, and made without any valuable consideration whatever passing from the said George Allan to the said Thomas Banks; that the said George Allan, as already hereinbefore stated, was a mechanic employed in the gas works of the gas company of New Orleans, at an annual salary of eighteen hundred dollars at the time of said pretended sale, and is still so employed; that his business is that of fitting and laying down pipes for gas, which is his chief or only occupation and means of subsistence, and engages all his time; that the said George Allan's circumstances are limited and contracted, and were so at the time of the said pretended and simulated sales and purchases aforesaid; and he, the said George Allan, then was, and now is, utterly unable to acquire and pay for property of this description and amount, having a wife and children to be supported out of his salary aforesaid; that the whole transaction was false, feigned, covinous, deceitful, fraudulent, and simulated, as well on the part of the said George Allan, as upon that of the said Thomas Banks, and that the same was contrived, designed, and executed by and between the said Thomas Banks and the said George Allan, as a crafty and deceitful device and subterfuge, for the purpose of hindering, delaying, or defrauding the creditors of the said Thomas Banks, or for the purpose of covering and concealing property of his from them, and upon some secret trust and confidence, written or verbal, express or implied, that the property so conveyed by the said simulated act of sale should be held or secured for the use and benefit of the said Thomas Banks, or for some person or persons by him appointed, or to be appointed, to the prejudice and in fraud of his creditors, and contrary to law. And your orator further sheweth unto your honors, that, shortly before the bankruptcy of the said Thomas Banks, to wit, on or about the in the year of our Lord one thousand eight hundred and the said George Allan received from the said Thomas Banks, or from some agent of his, or some person or persons acting on his behalf, and by his contrivance or authority, sundry and divers promissory notes, usually called *rent notes*, of sundry and divers persons, then or before that time tenants of the said Thomas Banks, and by them respectively to him, the said Banks, before that time given for the rent, use, and occupation of premises by them respectively rented, used, or occupied, and to him, the said Thomas Banks, then or before that time belonging and appertaining; a list or statement whereof, with names, dates, and sums, is herewith filed, and marked exhibit L. That the said promissory notes were endorsed by the said Thomas Banks to the said George Allan, and were by him, the said George Allan, collected in whole or in part; that the said George Allan gave no valuable consideration to the said Thomas Banks for the same; that the said promissory notes, usually called rent notes, amounted to the sum of five thousand dollars in the aggregate, and upwards, or to some other large sum of money; and although endorsed, transferred and assigned, either by endorsement in full or in blank, or by delivery from and by the said Thomas Banks to the said George Allan, as if for a valuable con-

sideration and in due course of trade, your orator expressly states, and so the truth is, that the same were endorsed, assigned, transferred and delivered, without any valuable consideration whatever, and in pursuance of a feigned, false, covinous, and fraudulent agreement between the said Thomas Banks and the said George Allan, written or verbal, express or implied, contrived, designed, and intended, to defraud the creditors of the said *of the said* Thomas Banks, or to cover and conceal property, rights, and credits of his from them; and upon some secret understanding, trust, and confidence, to hold or secure the amount of the said notes, or sum and sums of money due and payable, or to grow due and payable, upon the same, for the use and benefit of the said Thomas Banks, or for the use and benefit of some one by him appointed, or to be appointed, to the prejudice of, and in fraud of, his creditors, and contrary to law.

And your orator shews unto your honors, that the said George Allan, in pursuance of the said false, feigned, covinous, and fraudulent agreement and understanding, written or verbal, express or implied, or some other false, feigned, covinous, and fraudulent advice or subterfuge similar thereto, and by virtue of the said feigned and simulated transfers, assignments, endorsements, and delivery of the said promissory notes, usually called rent notes, in the said last mentioned exhibit more particularly described and set forth, proceeded to collect, and did actually collect, the whole or the larger part of the several sums of money due and payable, or to grow due and payable, upon the same, amounting, in the whole, to five thousand dollars and upwards, or other large sum, as in and by the bank book, pass book, or customer's book of the said George Allan, will more fully and at large appear; wherefrom the said exhibit L is a true copy, so far as relates to the same. And the said George Allan, after the same were collected by the said bank, drew and received the money proceeding from the said notes, in fraud of the creditors of the said Thomas Banks, and also in fraud of the said bankrupt act of the United States, and of the laws of the State, whereby he became chargeable and accountable to your orator, as assignee of the said Thomas Banks as aforesaid, for the said sum of five thousand dollars or upwards, or other large sum so as aforesaid by him, the said George Allan, falsely, fraudulently, deceitfully, and covinously obtained and received.

And your orator further sheweth unto your honors, that the said George Allan, Edmond W. Wells, and the said Samuel L. Forgay, severally and respectively, are, in like manner, chargeable and liable to your orator, as assignee aforesaid, in the sum of twenty thousand dollars each, for other property, moveable or immoveable, debts, rights, and credits, and other promissory notes or choses in action, by them, severally and respectively, since the twenty-seventh day of July, in the year of our Lord eighteen hundred and forty-two, from the said Thomas Banks had, obtained and received, or before that time had, obtained and received, and since then sold, conveyed, assigned, and transferred and collected, falsely, fraudulently, and covinously, for the purpose

of covering and concealing the same from the creditors of the said Thomas Banks, in fraud of the said creditors and contrary to law; or upon some secret trust and confidence, written or verbal, express or implied, that they, the said Samuel L. Forgay and George Allan, severally and respectively, would hold, secure, set over, transfer, and cover and conceal the said property, moveable and immoveable, debts, rights, credits, promissory notes, and choses in action, herein last mentioned, for the use and benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed, to the prejudice and in fraud of his creditors, and contrary to law; all of which said property, moveable and immoveable, real and personal, corporeal and incorporeal, rights, credits, promissory notes, and choses in action, hereinbefore last mentioned, belonged and appertained to the said Thomas Banks, and should have been placed upon his schedule, and placed in possession of your orator as assignee aforesaid; but the same was fraudulently and wilfully concealed by the said Thomas Banks, and assigned, transferred, and set over, upon the secret trusts and confidences aforesaid, to the said Samuel L. Forgay and George Allan, severally and respectively, with intent to hinder, delay, and defraud the creditors of the said Thomas Banks; the precise nature, description, extent, and amount of which property, moveable and immoveable, corporeal and incorporeal, being unknown to your orator, through the fraudulent conduct of the said Thomas Banks, Samuel L. Forgay, and George Allan, cannot, at this time, be more particularly set forth.

And your orator, so being lawfully and rightfully entitled, as assignee aforesaid, to the said several lots or pieces of land, with the improvements thereon, the said three slaves, and the said sum of forty-five thousand dollars, as well as all the other property, moveable and immoveable, rights, credits, estate, and effects, hereinbefore last referred to, which said slaves and pieces of land are still in the possession of the parties hereinbefore named, severally and respectively, or in the possession of some one or more of them, or of some person for them. Your orator hath often applied to the said Ann Fogarty, otherwise called Ann Wells, and to Edmond W. Wells, her husband, and to the said Thomas Banks, Samuel L. Forgay, George Allan, William Robertson, free man of color, and William Whitla, respectively, to deliver up to your orator the said lots of land, negro slaves, and sums of money aforesaid, and to account to your orator for the rents, issues, profits, fruits, hire, and interest thereof, that the same may be distributed by your orator among the creditors of the said Thomas Banks, according to law, as they, the said parties respectively and severally, are in equity and good conscience bound to do.

And your orator well hoped that the said Thomas Banks, Ann Fogarty, otherwise called Ann Wells, Edmond W. Wells, Samuel L. Forgay, William Robertson, free man of color, William Whitla, and George Allan, each and all of them well knowing that your orator was well entitled thereunto as aforesaid, would have complied with your

orator's request, as in justice, equity, and good conscience they ought to have done.

To the end, therefore, that the said Ann Fogarty, otherwise called Ann Wells, Edmond W. Wells, her said husband, Thomas Banks, Samuel L. Forgay, William Robertson, free man of color, William Whitla, and George Allan, and the rest of their confederates when discovered, may true, distinct, and perfect answer make to all and singular the matters and things herein and hereby charged, and that in a full and ample manner as if the same were here again repeated, and they and each of them severally and particularly thereunto interrogated:

Interrogatory 1. And particularly that the said Thomas Banks may answer and set forth whether he did not petition for the benefit of the bankrupt , and whether he was not thereupon declared bankrupt in the manner hereinbefore set forth; whether the said Francis B. Conrad was not appointed his assignee, and whether the said proceedings in bankruptcy have been finally closed and settled.

2d interrogatory. And that the said Edmond W. Wells answer and set forth whether he was not declared bankrupt on or about the twentieth day of June, as hereinbefore stated, in the year eighteen hundred and forty-two.

3d interrogatory. That the said Ann Fogarty, otherwise called Ann Wells, answer and set forth whether the three slaves hereinbefore mentioned, to wit, Maria, Ben, and Mary, did not remain in her possession, or under her power or control, after the seventeenth day of July, one thousand eight hundred and forty-three, and whether they or some one of them are not still in her possession, or under her power and control.

4th interrogatory. That the said Ann Fogarty, otherwise called Ann Wells, Edmond W. Wells, and Samuel L. Forgay answer and set forth whether, as soon or shortly after, the double two-story brick house, with out houses, situate on the lots at the corner of Nyades and Calliope streets, and hereinbefore particularly described, was finished, the said Ann Fogarty, otherwise called Ann Wells, and the said Edmond W. Wells, her said husband, did not move into and occupy the same; whether they, or one of them, did not ever since continue such occupation, and whether said house and premises is not still occupied by them up to the date of filing this bill.

5th interrogatory. That the said Samuel L. Forgay may answer and set forth whether the sale from Ann Fogarty, otherwise called Ann Wells, to him, the said Samuel L. Forgay, was not feigned and similated, and whether he, the said Samuel Forgay, gave any valuable consideration for the same; and, if any, that he may answer and set forth particularly and at large the nature, amount, and description of the said consideration; and if the said consideration, so given or pretended to be given, consisted of his own notes, whether the same, or any one, or any part of any one or more of them, has ever been paid; or payment of any one of them demanded; and if the said consideration consisted of notes or bills of any other person or persons, or of lands and tenements, goods and chattels, things moveable or immoveable, corporeal or incorporeal,

rights, credits, or money, that the said Samuel L. Forgay set forth the same particularly, and answer, whence, from whom, and by what means, and on what consideration, the same were derived; and especially, whether the same, or any and what part thereof, did not proceed from or belong to the said Thomas Banks, or was not directly or indirectly obtained from, through, or by him, upon some secret trust, agreement, or understanding, express or implied, verbal or written; and what was the nature, terms, and conditions of said trust, agreement, or understanding, verbal or written, express or implied; and if the same, or any of the terms and conditions thereof, were evidenced by any instrument in writing, or any written paper of any kind or description whatever, that he annex a true copy of the same to his answer, and set forth upon oath whether the date borne by such instrument or writing be the true date when the same was made and entered into, and whether the facts and consideration in such writing stated, be the true facts and consideration upon, or in consequence of which the same was made and entered into; and that upon the hearing of this cause he, the said Samuel L. Forgay, be held and ordered to produce the original of such instrument or paper writing, if any such there be, and to make due proof of the genuineness and authenticity and true date and consideration of the same.

6th interrogatory. That the said Samuel L. Forgay answer and set forth, whether, at the time of the said simulated sale from the said Ann Fogarty, otherwise called Ann Wells, to the said Samuel L. Forgay, and before and at the time of the bankruptcy of the said Edmond W. Wells and the bankruptcy of the said Thomas Banks, as hereinbefore stated, he, the said Samuel L. Forgay, did not reside in the city of New Orleans; and whether, at the time of the execution of the said simulated act of sale from the said Ann Fogarty, otherwise called Ann Wells, to him, the said Samuel L. Forgay, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-three, he, the said Samuel L. Forgay, had not express knowledge and notice of the bankruptcy of the said Edmond W. Wells and the bankruptcy of the said Thomas Banks; and, if he had not express knowledge or notice thereof, whether he did not know from common report, or believe, or whether he had not some reason to know, believe, or suspect, that the said Edmond W. Wells and the said Thomas Banks had, respectively, obtained the benefit of the bankrupt act shortly before that time, and been, respectively, declared bankrupts in due form of law.

7th interrogatory. And that the said Samuel L. Forgay answer and set forth, whether, since the bankruptcy of the said Edmond W. Wells and of the said Thomas Banks, to wit, in the summer and autumn of the year eighteen hundred and forty-three, a large two-story brick dwelling-house and out-buildings, of the value of ten thousand dollars, or other large sum, *was* not erected upon the said lots at the corner of Nyades and Calliope streets, in the said city of New Orleans, gratuitously donated, as aforesaid, by the said Thomas Banks to the said Ann Fogarty, otherwise called Ann Wells, wife of the said Edmond W. Wells,

and by whom, and for whose benefit and advantage, the contract for the same was entered into; and, if the same was made with the said Samuel L. Forgay, whether, in truth and reality, his name was not used merely to cloak, cover, and conceal the true parties, and real nature and character of the transaction; whether such contract was not, in fact, made with the concurrence, assent, and by the contrivance, of the said Thomas Banks, Edmond W. Wells, and Ann Fogarty, otherwise called Ann Wells, wife of the said Edmund W. Wells, for the purpose of causing said house and out-houses to be built out of the proper funds of the said Thomas Banks, or upon secret trust to, for, or with him, or for some person or persons by him appointed, or to be appointed, in fraud of his creditors, and contrary to law, or for the purpose of securing a fraudulent preference to some one creditor, or pretended creditor, out of the proceeds of his estate, or some part thereof, before that time wilfully and fraudulently by him concealed and secreted, contrary to law; whether there was any consideration really and truly passing from him, the said Samuel L. Forgay, to the said Robert Seaton, upon the building contract so made for the erection of the said buildings so erected upon the said lots at the corner of Nayades and Calliope streets, by Robert Seaton, master builder, as hereinbefore stated; and whether any, and what, part of the consideration for erecting the same was really and truly paid by the said Samuel L. Forgay out of his own proper money, effects, funds, rights, or credits; or whether the consideration for erecting the same was not in reality paid by the said Thomas Banks, or out of money, funds, rights, credits, or effects, furnished by, or proceeding, directly or indirectly, from him, or to him, the said Thomas Banks, before that time belonging and appertaining, and by him fraudulently concealed, transferred, and made over, upon some secret trust and confidence, written or verbal, express or implied, for his own use and benefit, or for the use and benefit of some one by him appointed, in fraud of his creditors and contrary to law.

8th interrogatory. And that the said Samuel L. Forgay may answer and set forth, whether, on the twenty-seventh day of July, in the year of our Lord eighteen hundred and forty-two, a certain square of land, number twenty-six, in fauxbourg Ginaudais, parish of Jefferson, and State of Louisiana, was not conveyed to him, the said Samuel L. Forgay, by one William Florance, as hereinbefore set forth; whether the said purchase was not made for the use and benefit of the said Thomas Banks, and with the funds, rights, credits, and effects of the said Thomas, as hereinbefore set forth; whether the said Samuel L. Forgay had any real interest in the said purchase, or merely lent his name to cover and conceal the true interest therein; whether a large part of the consideration of the said purchase was not paid in the rent notes of the said Thomas Banks, as hereinbefore more particularly and at large set forth; whether the said purchase was not made for the use of, or in trust for, the said Thomas Banks, or some person or persons by him appointed, or to be appointed, and by virtue of some understanding and agreement, written or verbal, express or implied, that the same was to

enure, directly or indirectly, to the benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed; and if such understanding, agreement, or counter-letter was in writing, that he be held to annex a true copy of the same to his answer, and to set forth and verify the execution and true date thereof.

Whether the consideration of the said purchase was not thirteen thousand dollars, whereof five thousand and forty-one dollars and sixty cents, or some other, and what sum, were paid, in the said rent notes of divers tenants of the said Thomas Banks, as hereinbefore fully and at large set forth, and the remaining seven thousand nine hundred and fifty-eight dollars and thirty-four cents were paid, or secured to be paid, by three promissory notes drawn by the said Samuel L. Forgay, and endorsed by the said Edmond W. Wells and the said Thomas Banks, each note being for the sum hereinbefore stated; and whether the said notes, or any, and which of them, have not since been paid, satisfied, or provided for, out of the proceeds of the property so acquired, as hereinbefore set forth, he, the said Samuel L. Forgay, contributing nothing of his own proper funds to the payment or satisfaction of the same?

Whether, after the bankruptcy of the said *of the said* Thomas Banks, to wit, on the twenty-seventh day of May, in the year eighteen hundred and forty-three, the said square of land in the suburb Livaudais, was not sold by the said Samuel L. Forgay, by and with the contrivance, assent, and concurrence of the said Thomas Banks, to one Persifor F. Smith, in the manner, and for the price, and on the terms, and by the act hereinbefore particularly stated? Whether the said act of sale, so far as regards the said Persifor F. Smith, was not made in good faith, and for a full and valuable consideration; but as it respects the said Samuel L. Forgay, whether the same was not made in continuation, furtherance, and execution of the said agreement, understanding, and contrivance, verbal or written, express or implied, between the said Thomas Banks and the said Samuel L. Forgay, hereinbefore fully and at large set forth? Whether the consideration mentioned in the said act of sale was not really and truly as hereinbefore stated? Whether the promissory note of the said Persifor F. Smith, for three thousand six hundred and ninety-four dollars forty-four cents, so proceeding and arising out of the said square in Livaudais, thus purchased as aforesaid with the rent notes of the said Thomas Banks, was not afterwards assigned, transferred, pledged, or given in payment by the said Samuel L. Forgay, by and with the assent, concurrence, and connivance of the said Thomas Banks, to the said Robert Seaton, the architect and contractor who erected the said double two-story brick dwelling-house and out-houses on the lots at the corner of Nayades and Calliope streets, hereinbefore more particularly described and set forth; and whether such assignment, pledge, or transfer was not made by public act, in the manner and of the date hereinbefore stated?

9th interrogatory. And that the said William Robertson, free man of color, may answer and set forth, whether Thomas Banks did not con-

vey him the lot in the suburb Delord, hereinbefore described, on the ninth day of May, in the year eighteen hundred and forty-two.

10th interrogatory. And that the said William Whitla may answer and set forth, whether the said Thomas Banks did not convey to him the two lots hereinbefore described, situate in the suburb Delord; whether the said conveyance was not made on the twenty-fourth day of May, in the year eighteen hundred and forty-two, and upon the terms, conditions, and considerations in the said act of *of* sale, herewith filed, expressed.

11th interrogatory. And that the said George Allan do answer and set forth, whether, in furtherance and pursuance of the understanding and agreement, by and between himself and the said Thomas Banks, hereinbefore set forth, or of any other and what agreement and understanding, written or verbal, express or implied, the said lots of land, hereinbefore more particularly described, were not conveyed to him, the said George Allan, by simulated acts of sale, at the times, and by the deeds, and upon the terms, conditions, and for the objects, purposes, and intents, and upon the trusts and confidences, verbal or written, express or implied, or upon any other, and what terms and conditions, purposes and intents, trusts and confidences, than those hereinbefore fully and at large set forth; and that he may answer to each and every of the allegations, in the stating part of this bill contained, fully, minutely, and particularly, as if the same were herein word for word repeated, and he thereunto interrogated, article by article, in so far as the same refer to the said pretended purchases of the said George Allan, hereinbefore specified and alleged to be simulated.

12th interrogatory. And, especially, that the said George Allan do answer and set forth, whether the said acts of sale, herewith filed and marked exhibit I and exhibit K, were not feigned and simulated. Whether the said George Allan gave, really and in good faith, any, and what, valuable consideration therefor; or whether the same were not taken in his name, at the instance and request of the said Thomas Banks, or of some one in his behalf, or by the concurrence, or with the connivance of the said Thomas, for the purpose of covering and concealing the said immoveable property, in the said acts of sale described, from the creditors of the said Thomas, and upon some secret trust and confidence, or some agreement and understanding, written or verbal, express or implied, that the same should be held or conveyed for the use and benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed; or should otherwise, in some manner, directly or indirectly, enure to the profit and benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed, in fraud of his, the said Thomas Banks', creditors, and contrary to law.

13th interrogatory. And that the said George Allan do also answer and set forth, whether, on or about the twenty-fourth day of January, in the year one thousand eight hundred and forty-three, or of any other, and what time or times shortly before or afterwards, or at any other and

what time between that day and the sixteenth day of April, in the same year, he, the said George Allan, did not receive from the said Thomas Banks, or from some person acting in his behalf and by his connivance or authority, sundry and divers promissory notes, usually called rent notes, of sundry and divers persons before that time tenants of the said Thomas Banks, and by them respectively to him before that time given for the rent, use, and occupation of the premises by them respectively rented, used, or occupied, and by him, the said Thomas Banks, belonging, in the statement or list herewith filed and marked exhibit L, more particularly described. Whether the said notes were not endorsed by the said Thomas Banks to the George Allan, and by him, the said George Allan, collected in whole or in part; and whether he, the said George Allan, gave any, and what, valuable consideration to the said Thomas Banks for the same; whether the sum or sums so collected on the same did not amount, in the aggregate, to five thousand dollars, or any other, and what sum. Whether the said list marked exhibit L is not a true copy of the bank book, customers' book, or pass book of the said George Allan, with , wherein the said notes were by him, the said George Allan, deposited in his own name for collection; and whether the same were not in fact collected and the amount aforesaid drawn by him, the said George Allan, from the said bank.

14th interrogatory. And that the said Samuel L. Forgay, Edmond W. Wells, and George Allan may severally and respectively answer and set forth, whether other property, moveable or immoveable, of any and what kind soever, corporeal or incorporeal, rights, credits, bills, bonds, promissory notes, stocks, or choses in action, have not come to their hands, or the hands of either, and which, of them from the said Thomas Banks, without consideration at any time since the twenty-seventh day of April, in the year of our Lord eighteen hundred and forty-two, or at any other and what time. Whether the same did not amount in value to the sum of forty thousand dollars, or to any other and what sum; and whether such property, moveable or immoveable, corporeal and incorporeal, rights, credits, bills, bonds, promissory notes, stocks, and choses in action, were not had and obtained, and the same, or any and what part thereof still held, or since sold, conveyed, assigned, transferred and collected, with or without notice, for the purpose of covering and concealing the same from the creditors of the said Thomas Banks, or of giving a fraudulent preference to some creditors over others of the said Thomas Banks, or upon some secret trust and confidence, understanding or agreement, written or verbal, express or implied, that they, the said Samuel L. Forgay and George Allan, severally and respectively, would hold, secure, set over, transfer, cover or conceal the said property, moveable and immoveable, corporeal and and incorporeal, rights, credits, bills, bonds, promissory notes, stocks, choses in action, or their proceeds, for the use and benefit of the said Thomas Banks, or of some person or persons by him appointed, or to be appointed, to the prejudice and in fraud of his said creditors;

and that the said Samuel L. Forgay and George Allan may fully, particularly, and minutely answer and set forth the precise nature, description, extent, situation, value, and amount of the said property, moveable and immoveable, corporeal and incorporeal, rights, credits, bills, bonds, promissory notes, stock, and choses in action last aforesaid, so by them, or either of them, or by any person or persons in their behalf, or acting for them, or either of them, had, received, obtained, concealed, covered, assigned, transferred, set over, or held upon trust and confidence as aforesaid, or upon any understanding or agreement with the said Thomas Banks, written or verbal; and if the same be in writing, that they be severally held and ordered to annex a copy or copies of such writing or writings to their answers, verifying the same. That the said Ann Fogarty, otherwise called Ann Wells, wife of the said Edmond W. Wells, and her said husband, Edmond W. Wells, Samuel L. Forgay, Thomas Banks, William Whitla, William Robertson, and George Allan, may be decreed to come to a just and fair account with your orator, for all and singular the said lots of land, negroes, promissory notes, and all and singular the other property, moveable and immoveable, corporeal and incorporeal, rights, credits, bills, bonds, promissory notes, stocks, and choses in action, hereinbefore stated and set forth, as justly and rightfully belonging, in equity and good conscience, to the estate of the said Thomas Banks, and to your orator, as his assignee; together with the rents, issues, fruits, profits, and interests thereof, and of every part thereof, which have come to the hands, custody, possession, or power of them, the said defendants respectively, or which have been received by them, or any one or more of them, or by any person or persons, by his, her, or their order, or for his, her, or their account, use, benefit, or advantage; and that they may severally and respectively pay to your orator what, upon such account, shall appear to be due to him; and that the said several false, feigned, covinous, and gratuitous deeds and simulated acts of sale be ordered and decreed to be given up and cancelled, or that the said several parties (defendants) holding the same be severally and respectively decreed to convey the several premises therein mentioned to your orator, so that the same may be sold, and the proceeds distributed according to law; and to prevent future false, feigned, covinous, and simulated transfers of the said property, moveable and immoveable, corporeal and incorporeal, that the said Ann Fogerty, otherwise called Ann Wells, wife of Edmond W. Wells, her husband Edmund W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, (free man of color,) and George Allan, and each of them, severally, be strictly *commanded* and *injoined* not to sell, alien, convey, dispose of, or in any manner whatever put out of their possession and control any or any part of the lots, slaves, or other property, moveable or immoveable, corporeal or incorporeal, so as aforesaid by them severally and respectively obtained from the said Thomas Banks by the said simulated acts of sale, transfer, assignment, endorsement or otherwise, directly or indirectly, in fraud of his creditors and contrary to law; and that your orator may

have such other and further *relief* in the premises as the nature of the case may *may* require, and to your honors shall seem agreeable to equity and good conscience; and your orator prays that the said several exhibits herewith filed be taken as part of this bill.

May it please your honors to grant unto your orator the writ of subpœna, to be directed to the said Ann Fogarty, otherwise called Ann Wells, wife of Edmond W. Wells, and the said Edmond W. Wells her husband, and to Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, free man of color, and George Allan, commanding them, and each of them, at a certain [day,] and under a certain pain therein to be inserted, personally to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such decree, as to your honors may seem agreeable to equity and good conscience. And your orator, as in duty bound, will continue to pray, &c.

J. P. BENJAMIN,
LOCKETT & MICOU.

RICHARD HENRY WILDE,
27th day of April, 1844. *Complainant's solicitor.*

The defendant, Thomas Banks, is required to answer the interrogatory No. 1.

The defendant, Edmond W. Wells, is required to answer the interrogatory marked 2 and 14.

The defendant, Ann Fogarty, otherwise called Ann Wells, wife of the said Edmond W. Wells, is required to answer the 3rd and 4th interrogatories.

The defendant, Samuel L. Forgay, is required to answer the 4th, 5th, 6th, 7th, 8th, and 14th interrogatories.

The defendant, William Robertson, is required to answer the 9th interrogatory.

The defendant, William Whitla, is required to answer the 10th interrogatory.

The defendant, George Allan, is required to answer the 11th, 12th, 13th, and 14th interrogatories.

R. H. WILDE,
Complainant's solicitor.

Exhibit A.

United States district court, in the bankruptcy of Thomas Banks, No. 353.

UNITED STATES OF AMERICA,
In Bankruptcy.

Petition by debtor for the benefit of the act of Congress.

To the honorable the judge of the United States district court for the eastern district of Louisiana:

Respectfully represents the petition of Thomas Banks, residing in the parish of Orleans and State of Louisiana, that he is owing debts, in his

private right and capacity, to sundry creditors, a list of whose names and places of residence, and the amount due to each, according to the best of [his] knowledge and belief, is contained in the schedule hereto annexed, marked A; and that the said schedule, so marked, contains also an accurate inventory of his property, rights, and credits, of every name, kind, and description, and of the location and situation of each and every parcel and portion thereof; that he is unable to meet his debts and engagements, and therefore applies to this honorable court for the benefit of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and prays that, after due proceedings had, he may be declared by a decree of the court to be a bankrupt, within the purview of the said act; and upon his compliance with all the requisitions of said act, and all the orders and directions of the court in the premises, that he may be decreed to have a certificate of discharge from all his debts proveable under the said act, and otherwise entitled to all the benefits thereof; and in the event of their being any errors in said [schedule,] he prays to be allowed to correct the same hereafter by means of an amended schedule.

Signed by the petitioner on this 30th day of July, A. D. 1842.

Signed, THOMAS BANKS.

Sworn to by the petitioner, before me,

W. J. VASON,

Commissioner of the said court, et C. eo ct.

Order of the court thereon—district court.

On this 30th day of July, A. D. 1842, upon reading the foregoing petition, it is ordered by the court, that notice thereof be published in two newspapers, printed in the district, at least twenty days before the 5th day of September, when a hearing will be had on the said petition, at the court room within the said district, at 10 o'clock in the forenoon, so that persons interested may appear at the said time and place, and show cause, if any they have, why the prayer of the said petitioner should not be granted.

Signed, ED. LANOR,

Dy. clerk of the said court.

UNITED STATES DISTRICT COURT,

Eastern district of Louisiana:

Sttting in bankruptcy, September 5th, 1842; present the honorable T. H. McCaleb, judge; in the matter of the petition of Thomas Banks, to be declared bankrupt, No. 353.

The petition and proofs having been inspected and considered by the court, and being found in conformity with the requirements of the act of Congress, it is therefore ordered that Thomas Banks, of New Orleans, be, and he is hereby, declared and decreed bankrupt, pursuant to the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841.

It is further ordered, that Francis B. Conrad, of the city of New Or-

leans, be, and he accordingly is hereby, appointed assignee of the estate of said bankrupt, and that the said F. B. Conrad give security, in a bond to the United States, with two sufficient sureties to be approved by the court, in the sum of thirty thousand dollars, conditioned for the due and faithful discharge of all his duties as such assignee, and his compliance with the orders and directions of the court.

And it is furthermore ordered, that the clerk do certify, and cause to be delivered, this order to the said assignee.

Discharge and certificate in bankruptcy.

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana:

New Orleans, December 5th, 1842. Present the honorable Th. H. McCaleb, judge; in the matter of Thomas Banks, for the benefit of the act of Congress.

Thomas Banks, of New Orleans, having filed his petition, praying to be discharged in full from all his debts, and for a certificate of such discharge, pursuant to the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19th, 1841, and it being shewn to the satisfaction of the court that the said bankrupt has, bona fide, surrendered all his property and rights of property, and that he has fully complied with, and obeyed, all the orders and directions which have from time to time been passed by this court, and has otherwise conformed to all the requisites of the said act; that proof of publication, according to the rules of this court, has been duly made, and notice given to the creditors. And it further appearing that no written dissent to the bankrupt's discharge has been filed by a majority in number and value of his creditors who have proved their debts, and no opposition whatever has been made. No cause being now shown to the contrary why the prayer of the petitioner should not be granted:

It is, therefore, by virtue of the act aforesaid, ordered and decreed by the court, that the said Thomas Banks be, and he is accordingly hereby, fully discharged of and from all the debts owing by him at the time of the presentation of his petition to be declared bankrupt, to wit, on the 30th day of July, A. D. 1842.

It is further ordered, that the clerk duly certify a copy of this decree, under the seal of this court, and deliver the same to the bankrupt when demanded.

Clerk's office United States district court, in and for the eastern district of the State of Louisiana.

I, N. R. Jennings, clerk of the above entitled court, do hereby certify, that the foregoing five pages contain true and faithful copies of the originals now of record, and on file in this court in a certain case in bankruptcy, entitled "Thomas Banks vs. his creditors," and numbered on the docket 353; and furthermore, that the settlement of the estate of

said bankrupt, so far as pertaining to the discharge of the duties of the assignee, F. B. Conrad, is still pending.

[L. S.] Witness my hand and seal, this 6th day of May, A. D. 1844.

N. R. JENNINGS, *Clerk.*

By JAMES R. JENNINGS, *Dy. clerk.*

Exhibit B.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that this day before me, Joseph Benzaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Mr. Thomas Banks, of this city, who declared, that in consideration of the natural love and affection which he has towards Mrs. Ann Fogarty, of lawful age, widow of Henry Hutton, and now the wife [of] Edmund W. Wells, of this city, he does by these presents make a donation, inter vivos, gratuitous, and irrevocable, unto the said Mrs. Ann Fogarty, wife of said Edmund W. Wells, and by her said husband herein duly authorized and assisted, here present and accepting for herself, her heirs, and assigns, and acknowledging possession thereof, the following described landed property, and slaves for life, to wit:

First. Two certain lots of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the suburb Saulet of this city, in the square bounded by Nayades, Clio, Preytania, and Calliope streets, and designated by the numbers one and two, on a certain plan drawn by Charles F. Zimple, deputy surveyor general, under date of the eighth day of April, eighteen hundred and thirty-five, and deposited in the office of W. Christy, a notary public in this city, for reference; lot No. one forms the corner of Nayades and Calliope streets, and measures twenty-six feet seven inches and five lines front on said Nayades street, by one hundred and twenty feet in depth and front on said Calliope street; lot No. two measures twenty-six feet seven inches and five lines front on Nayades street, by one hundred and twenty feet in depth, between parallel lines; in the rear of which lot there is an alley of fourteen feet in width, as per said plan, which is to be kept open for the common use and advantage of all the owners of lots bordering thereon; and

Second. The following slaves for life, to wit: Maria, a negress, aged about forty-three years; Ben, a negro man, aged about thirty-two years; and Mary, a griffonne, aged about twenty-nine years; which landed property and slaves were acquired by the said Banks in the following manner, to wit: lot No. one from Richard Brennan, by an act passed before H B Cenas, a notary public in this city, on the twenty-fifth of September, 1840; lot No. two from Richard M. Carter, by an act passed before said Cenas, notary, on the twenty-seventh day of April, 1839; the slave Maria, from John Hagan, by an act passed before me, the un-

dersigned notary, on the fifth of February, 1841; and the slaves Ben and Mary, from Thomas McCargo, by an act passed before me, notary, on the fifth of February, 1841.

To have and to hold the said landed property and slaves unto the said Mistress Ann Wells, her heirs and assigns, to their proper use and behoof forever; and the said donor for himself, his heirs and assigns, the said landed property and slaves, to the said donee, her heirs and assigns, shall and will warrant, and forever defend, against the lawful claims of all persons whomsover, by these presents.

And the said donor does moreover subrogate the said donee to all the rights and actions of warrants which he has against his own vendors, and all preceeding vendors thereof; fully authorizing the said donee to exercise the said rights and actions in the same manner as he himself might or could have done.

And by reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that there are no other mortgages standing in the name of said Banks, and recorded against the above described property and slaves, than the following, to wit: first, the general one in favor of Lanor Brothers, rendered by the parish court on the twenty-fifth of June, 1841, for fourteen hundred dollars, agreeably to the said judgment; second, the general one in favor of the New Orleans Canal and Banking Company, rendered by the same court the twenty-second of April, 1842, against Thomas Banks and Victor David, in solido, for twelve hundred seventeen dollars and forty cents, interest and costs; and third, the one in favor of same institution, rendered on the same day and by the same court, for four thousand eight hundred dollars, with interest and costs; and said recorder further certifies that said lot No. two, above described, is subject, together with other property, to a certain mortgage granted by Richard Montgomery Carter, per act passed before David L. McCay, notary, dated the twenty-sixth of May, 1837, in favor of Laurent Millaudon, to secure twenty-one thousand three hundred ten dollars twenty-seven cents, and the eventual interest at ten per cent. per annum, which mortgage is diminished by fifteen thousand three hundred and ten dollars twenty-seven cents; which mortgages said Banks obligates himself to have cancelled within the shortest possible time.

And now, to these presents, personally came and intervened Mistress Charlotte Fogarty, of lawful age, and wife of the said Thomas Banks, who did declare unto me, notary, that it is her wish and intention to release, in favor of the said Mrs. Ann Wells, the property and slaves herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Thomas Banks or otherwise.

Whereupon, I, the said notary, did inform the said Mrs. Charlotte Banks, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage on the property of her said husband:

First, for the restitution of her dower, and for the investment of the

dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly, for the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected.

Thirdly, for nuptial presents.

Fourthly, for debts by her contracted with her said husband; and

Fifthly, for the amount of her paraphernal property alienated by her and contracted with her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said Mrs. Charlotte Banks did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law, on the property of her said husband; and that, availing herself of the right secured to her by the second section of an act passed by the Legislature of this State, authorizing wives to make valid renunciations, &c., approved on the twenty-seventh day of March, eighteen hundred and thirty-five, she nevertheless did persist in her intentions of renouncing, not only all the rights, claims, and privileges, hereinbefore enumerated and described, but all others of any kind or nature whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Thomas Banks, being now present, aiding and authorizing the said Mrs. Charlotte Banks in the execution of these presents, she, the said Charlotte Banks, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims and privileges, in favor of the said Ann Wells, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the city of New Orleans, in the presence of Daniel J. Ricardo and Theophilo Commage, witnesses of lawful age, and domiciliated in this city, who [L. S.] hereunto sign their names, together with the said parties, and me, the said notary, on this second May, in the year of our Lord one thousand eight hundred and forty-two.

Original signed Thomas Banks, C. Banks, A. Wells, E. W. Wells, D. J. Ricardo, Theodore Commagere.

J. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register; in faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this twenty-sixth of March, 1844.

JOSEPH B. MARKS, *Not. Public.*

Exhibit C.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, Wm. Christy, Joseph Ben-

zaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared, and authorized by an act passed before Lucien Herman, a notary public in and for this city and parish, on the 25th of April last, to represent Joseph Benzaken Marks, also a notary public in and for this city and parish, now absent from this State by and with the consent of the Governor thereof, personally came and appeared Mrs. Ann Fogarty, widow of Henry Hutton, (deceased,) and now wife of Edmund Wylie Wells of this city, and by her said husband herein duly authorized and assisted:

Who declared, that for the consideration hereinafter set forth, she does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto Samuel Lindsey Forgay, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following landed property and slaves for life, to wit: First, two certain lots of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the fouxbourg Saulet, of this city, in the square bounded by Nayades, Clio, Prytania, and Calliope streets, and designated by the Nos. *one* and *two*, on a certain plan drawn by C. F. Zimple, deputy surveyor general, and dated the eighth of April, 1835, and deposited in the office of the undersigned notary (W. Christy) for reference; lot No. one forms the corner of Nayades and Calliope streets, and measures twenty-six feet seven inches and five lines front on said Nayades street, by one hundred and twenty feet in depth and front on said Calliope street. Lot No. *two* measures twenty-six feet seven inches and five lines front on Nayades street, by one hundred and twenty feet in depth, between parallel lines; in the rear of which lots there is an alley of fourteen feet in width, as per said plan, which is to be kept open for the common use and advantages of all the owners of the lots bordering thereon, said property being valued at three thousand dollars. Second, the following slaves for life, to wit: Maria, a negress, aged about forty-four years; Ben, a negro man, aged about thirty-three years; and Mary, a griffone, aged about thirty years; each of said slaves are of equal value, say five hundred dollars each. Said slaves are fully guarantied against the vices and maladies prescribed by law; and said vender declared that she is not a negro trader, nor does she deal habitually in the traffic of slaves; which landed property and slaves were acquired by the said vendor by an act of donation from Thomas Banks, passed before J. B. Marks, notary public in this city, on the second of May, 1842.

To have and to hold the said property and slaves unto the said purchaser, his heirs and assigns, to their proper use and behoof for ever; and the said, for herself and her heirs, the said property and slaves to the purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these

presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warrants which she has or may have against her own vendor, or against the vendors of her vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as she herself might or could have done. This sale is made and accepted for and in consideration of the price and sum of four thousand five hundred dollars, in payment of which said purchaser has furnished his three several promissory notes for the sum of fifteen hundred dollars each, dated this day, drawn to his own order, and by him endorsed, and payable respectively at six, twelve, and eighteen months after date.

Which notes, after having been paraphed ne varietur by me, notary, for the purpose of identifying them herewith, were delivered to the present vendor, who hereby acknowledges the receipt hereof.

And in order to secure the full and punctual payment of said notes at maturity, the property and slaves herein conveyed, and hereby specially mortgaged in favor of said vendor, or in favor of any and all holders of said notes, the purchaser binding himself and his heirs not to sell, alienate, deteriorate, or encumber the same, to the prejudice of this act.

And by reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that there is no other mortgage standing in the name of said vendor, and recorded against the property and slaves herein conveyed, than the general one resulting from the certificate of Charles Blache, deputy register of wills for this city and parish, dated seventeenth May, 1828, by which it is stated that said widow Hutton has taken her oath as natural tutrix of her children, named Henry Thomas Hutton and Ann Charlotte Hutton.

Thus done and passed, in my office, in the city of New Orleans aforesaid, in the presence of Daniel J. Ricardo and Theophilo Commager, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this seventeenth day of July, in the year one thousand eight hundred and forty-three.

Original signed, Samuel L. Forgay, E. W. Wells, A. Wells, D. J. Ricardo, Th. Commagere.

WM. CHRISTY, *Not. Pub.*

I certify the foregoing to be a true copy from the original act, extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, this sixth day of April, 1844, eighteen hundred and forty-four. [L. S.]

J. B. MARKS, *N. Pub.*

Exhibit D.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans.

Before me, Adolph Mazureau, notary public in and for this city and parish of New Orleans, duly commissioned and sworn, and in the pre-

sence of the witnesses hereinafter named and undersigned, personally appeared *William Florance*, of this city, who declared that, for the consideration hereinafter expressed, he does, by these presents, sell, bargain, convey, assign, set over, and deliver, with a full warranty against all debts, liens, mortgages, suits, evictions, alienations, and all incumbrances whatsoever, unto *Samuel D. Forgay*, of this city of New Orleans, here present, and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession, a certain square of ground, number twenty-six, situated in faubourg Livaudais, parish of Jefferson, between Eighth, Ninth, Chippewa, and Jersey streets, measuring three hundred and sixty feet front on Eighth street, three hundred and sixty feet front on Ninth street, two hundred and fifty feet front on Chippewa street, and two hundred and fifty feet front on Jersey street, all English measure, together with all the buildings, improvements, rights, ways, privileges, and appurtenances thereon and thereunto belonging, or in any wise appertaining.

The said property is the same which the said William Florance purchased at the sale made by the coroner of the parish of Jefferson on the seventh day of July, eighteen hundred and forty-one, by virtue of a writ of *fieri facias* to said coroner directed by the honorable the first judicial district court of the State of Louisiana, at the suit of the Union Bank of Louisiana vs. Joseph Bundy, No. 19,782 on the docket of said court; said property was sold by the said William Florance to Alexander M. Giffing, by an act passed before me, notary, on the twelfth day of November, eighteen hundred and forty-one; and the said Alexander M. Giffing reconveyed the same to the said William Florance, by an act passed before me, the said notary, on the tenth day of June, eighteen hundred and forty-two.

To have and to hold the said square of ground and buildings unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; and the said vendor the said square of ground and buildings to the said purchaser, Samuel L. Forgay, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendor moreover subrogates the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he might or could have done.

This sale is made and accepted for and in consideration of the price and sum of thirteen thousand dollars, in payment and liquidation whereof the purchaser has furnished the following described promissory notes, to wit:

1st. A note drawn by P. P. Rea on the first of November, eighteen hundred and forty-one, to the order of, and endorsed by, Thomas Banks, next endorsed by E. W. Wells and by the said Samuel L. Forgay, for the sum of eight hundred thirty-three dollars thirty-three and one-third cents, payable twelve months after date.

2d. A note drawn by John S. Pritchard on the twenty-ninth day of

September, eighteen hundred and forty-three, to the order of, and endorsed by, Thomas Banks, next endorsed by E. W. Wells and by Samuel L. Forgay, for the sum of six hundred eighty-three dollars thirty-three and one-third cents, payable on the first day of October, eighteen hundred and forty-two, fixed.

3d. A note drawn by Patsey Shall, on the seventeenth day of September, eighteen hundred and thirty-eighth, to the order of, and endorsed by, Thomas Banks, next endorsed by E. W. Wells and Samuel L. Forgay, for the sum of thirty-one hundred and twenty-five dollars, payable on the first day of November, eighteen hundred and forty-two.

4th. A note drawn by William H. Whitmarsh on the seventeenth day of May, eighteen hundred and forty-two, to the order of, and endorsed by, N. D. Chamberlain, next endorsed by Thomas Banks, E. W. Wells. and Samuel L. Forgay, for the sum of four hundred dollars, payable on the first day of November, eighteen hundred and forty-two, fixed.

5th. And three promissory notes, each for the sum of twenty-six hundred fifty-two dollars and seventy-eight cents, subscribed this day by the said Samuel L. Forgay to the order of, and endorsed by, E. W. Wells, next endorsed by Thomas Banks, and payable respectively at six, twelve, and eighteen months, from the first day of November, eighteen hundred and forty-two after date, and bearing interest at the rate of ten per cent. per annum from maturity until final payment.

All which said promissory notes, being seven in number, were marked "ne varietur," and countersigned by me, notary, to identify them with these presents, and were handed over to, and accepted by, the said William Florance, who hereby acknowledges the receipt thereof.

And, in order to secure the full and punctual payment of the said seven promissory notes without renewal at maturity, together with the amount of eventual interest which may accrue upon the same, in case of non-payment, the square of ground and buildings herein conveyed remain, by these presents, specially mortgaged and hypothecated in favor of the vendor, and of any holder of said notes, the said purchaser, Samuel L. Forgay, hereby binds himself not to sell, alienate, mortgage, incumber, nor deteriorate the said property to the prejudice of the mortgager.

By reference to the certificate of the recorder of mortgages in and for the parish of Jefferson, and hereto annexed, it appears that the following mortgages exist on the said property, to wit:

1st. The mortgage originally granted by Jno F. Miller to secure eighty-five shares of the capital stock of the Union Bank of Louisiana, subsequently assumed by the several owners of the said property.

2d. The mortgage granted by said William Florance and Mistress Myrtilla Seixas, his wife, to secure the payment of a loan of twelve hundred and seventy-five dollars, and a stock note for two thousand three hundred thirty-seven dollars and fifty cents, in favor of the said Union Bank of Louisiana, which two mortgages have been released by the said bank by an act passed before me, notary, of even date herewith.

And from the said certificate it appears that said property is still subject to a mortgage granted by Alexander M. Griffing in favor of said William Florance, by an act passed before me (notary) on the twelfth day of November, eighteen hundred and forty-one, to secure the payment of five several promissory notes, amounting to thirteen thousand seven hundred and twenty-seven dollars thirty-five cents, and eventual interest. In the act whereby the said Alexander M. Griffing reconveyed the said property to the said William Florance it was expressly stipulated and agreed, that the said notes should be and remain in possession of said William Florance, and not to be returned to the said Griffing until the renunciation of his wife should be produced in due form of law. It is consequently hereby agreed that, inasmuch as the said notes bear mortgage on the said property, the same shall be released, and the notes shall be returned to said Griffing as soon as the said renunciation is furnished; and the said William Florance hereby holds himself personally responsible to the said purchaser for the effects of said mortgage, hereby binding himself to indemnify him for all losses and damages which might result therefrom.

And next personally appeared Mistress Myrtilla Seixas, the wife of William Florance, and by her said husband duly authorized, who acknowledges that she is fully aware of the rights of married women on the property of their husbands; which said rights, I, the said notary, did carefully explain to her, out of the presence and hearing of her said husband, as it was my duty to do; and who further declared, that being well informed of the existence of an act of the Legislature of the State of Louisiana, entitled "An act to limit the time in which married women, aged above twenty-one years, may retract renunciations, by them made in favor of third persons, of their matrimonial, dotal, paraphenal, and other rights, and to authorize them in future to make valid renunciations. Approved March 25, 1835"—she does, by these presents, of her own free will and accord, and without any compulsion or coercion of her said husband, renounce in favor of the said Samuel L. Forgay, here present and accepting the same, all the matrimonial, dotal, paraphenal, and other rights and privileges, which, by virtue of the law or otherwise, she may have on the square of ground and buildings hereby conveyed:

1st. For the restitution and replacing of such dotal effects as were her property previous to marriage.

2d. For the restitution and replacing of such dotal effects as she may have since acquired by succession or donation.

3d. For the payment of such of her paraphenal property as shall have been appropriated by her said husband to his own use, or by which he may, in his individual capacity, have profited.

4th. As a security for the obligations of her husband, as usufructuary of her paraphenal property.

5th. As an indemnity for debts which she may have contracted with her husband, as also for the purpose of replacing such part of her sep-

arate property as may have been sold, and, generally, in virtue of all causes whatsoever.

The said appearer hereby binding herself and her heirs to the said Samuel L. Forgay, that she and they shall and will, at all times hereafter, acknowledge and sustain the validity of the foregoing conveyance and of this renunciation.

Done and passed, in my office, at the city of New Orleans, on this twenty-seventh day of July, eighteen hundred and forty-two, in the presence of Messrs. Jno. Cragg and Joseph Octave Chalon, witnesses, who have signed these presents, with the parties, and me, the said notary, after reading the whole.

(Signed) WM. FLORANCE,
MYRTILLA FLORANCE,
SAMUEL L. FORGAY,
J. CRAGG,
J. O. CHALON.

I certify the above to be a true copy of the original act of which it purports to be a copy.

In faith whereof, I have hereunto set my hand and seal, at New Orleans, this twenty-fifth day of March, eighteen hundred and forty-four.

A. MAZUREAU, *Not. public.*

Exhibit E.

STATE OF LOUISIANA, *city of New Orleans.*

Be it known, that this day, before me, Hilary Breton Cenas, a notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Samuel L. Forgay, of this city, who declared, that for the consideration, and on the terms and conditions hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto Persifor F. Smith, of the parish of Jefferson, in this State, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery and due possession thereof, a certain parcel or square of ground, together with all the buildings and improvements thereon, and all the rights, privileges, customs, ways, servitudes, and appurtenances thereunto belonging, or in any wise appertaining, situate in the fauxbourg Livaudais, in the parish of Jefferson, in this State, designated as the number "twenty-six," and comprised within and bounded by Eighth, Ninth, Chippewa, and Jersey streets; which square measures three hundred and sixty feet front on said Eighth street, three hundred and sixty feet front on said Ninth street, two hundred and fifty feet front on said Chippewa street, and two hundred and fifty feet front on said Jersey street, all English measure, and be the same more or less, being the same prem ses which the said vendor acquired by pur-

chase of William Florance, by an act passed before Adolphe Mazureau, a notary public in this city, on the twenty-seventh day of July, eighteen hundred and forty-two.

By reference to the annexed certificate of the recorder of mortgages, in and for the said parish of Jefferson, dated this day, it will appear, that there is no mortgage or encumbrance whatsoever, standing in the name of the said vendor, and recorded against the said square of ground, with the exception of the mortgage herein below recited and assumed.

To have and to hold the said described premises, unto the said purchaser, his heirs and assigns forever; and the said vendor, for himself and his heirs, the said described premises herein conveyed to the said purchaser, his heirs and assigns, shall and will warrant and forever defend, against all legal claims and demands whatsoever; and the said vendor doth hereby moreover transfer unto the said purchaser, all and singular the rights and actions of warranty, to which he is or may be entitled, against any and all of the former owners of the premises herein conveyed, hereby subrogating the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of twelve thousand dollars, in part payment and deduction of which the said purchaser has paid the sum of four thousand and forty-one dollars and sixty-six cents, in the manner following, to wit: 1st, the sum of three hundred and forty-seven dollars and twenty-two cents, in ready current money, at the execution of these presents. 2d, and the sum of three thousand six hundred and ninety-four dollars and forty-four cents, in the promissory notes of him, the said purchaser, for a like sum, drawn to the order of, and endorsed by, the said vendor, bearing even date herewith, and made payable on the fifteenth day of November, eighteen hundred and forty-four, with interest thereon, after maturity, at the rate of ten per centum per annum, until final payment; which note, after having been duly paraphed by me, notary, to identify it with this act, was delivered to the said vendor, who hereby acknowledges the receipt thereof; and in payment and liquidation of the balance of said price, to wit, the sum of seven thousand nine hundred and fifty-eight dollars and thirty-four cents, the said purchaser has assumed, and, accordingly, hereby binds himself and assumes, to pay and take up in the place and stead of the said vendor, and to his acquittance, three certain promissory notes for the sum of two thousand six hundred and fifty-two dollars and seventy-eight cents each, drawn by the said vendor to the order of, and endorsed by, E. W. Wells, and afterwards endorsed Thomas Banks, all dated on the twenty-seventh day of July, eighteen hundred and forty-two, and made payable respectively in six, twelve, and eighteen months, from the first day of November, eighteen hundred and forty-two, with interest thereon, at the rate of ten per centum per annum, from maturity until final payment, which notes were given by the said vendor in part payment *from* the above described property, and are secured by the special mortgage, which he granted in

favor of his said vendor, by a clause in his said act of purchase, which mortgage is also hereby assumed by the said purchaser.

And in order to secure the full and punctual payment of the above described promissory notes, together with the interest that may eventually accrue thereon, the said purchaser doth hereby mortgage and specially hypothecate the said described property in favor of the said vendor, or of any holder of said notes, promising not to sell, alienate, deteriorate, nor in any wise encumber the same, or any part thereof, to the prejudice of this mortgage; and the said purchaser doth moreover confess judgment for the whole amount of the said notes, and agrees, that in case of non-payment of the same as herein stipulated, the law in such cases made and provided may be strictly enforced and summarily put into execution against the said property. And the said purchaser doth furthermore bind and obligate himself, by the presents, to keep the buildings and improvements on the aforesaid property insured, in any office which the said vendor may designate, to the amount of six thousand dollars, until the full and final payment of the above described promissory notes, and to transfer the policy of insurance to the said vendor.

This done and passed in my office, at the said city of New Orleans, in the presence of Ernest Granet and Michel Aime, junior, witnesses of lawful age, and domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, the said notary, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty-three.

Original signed:

SAMUEL L. FORGAY,
PERSIFER F. SMITH,
H. B. CENAS, *Not. public.*

E. GRANET,
ML. AIME, JR.

I certify the foregoing to be a true copy of the original on file and record in my office.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this twenty-fifth [SEAL.] day of March, in the year of our Lord one thousand eight hundred and forty-four.

H. B. CENAS, *Not. public.*

Exhibit F.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and qualified, personally came and appeared Samuel Lindsey Forgay, of this city, unmarried, who declared that he does, by these presents, acknowledge himself to be justly and truly indebted unto Robert Seaton, also of this city, in the full sum

of three thousand six hundred and ninety-four dollars and forty-four cents, for which he has furnished four several promissory notes, to wit: One for the sum of twelve hundred and forty-seven dollars; one for the sum of one thousand and twenty dollars; one for the sum of eight hundred and eighty dollars, and one for the sum of five hundred and forty-seven dollars and forty-four cents, all drawn to the order of the said Robert Seaton, all bearing even date herewith, and made payable respectively on the fifteenth day of November, eighteen hundred and forty-four; which notes, after having been duly paraphed by me, notary, to identify it with this act, were delivered to the said Robert Seaton, who hereby acknowledges the receipt thereof.

Now, therefore, in consideration of the premises, and in order to secure the full and punctual payment at maturity of the aforesaid promissory notes, the said Samuel Lindsay Forgay moreover declared that he does, by these presents, mortgage, affect, and specially hypothecate, in favor of the said Robert Seaton, here present and accepting, two certain lots of ground, together with all the buildings and improvements thereon, all the appurtenances thereunto belonging, situate in the fauxbourg Saulet of this city, in the square bounded by Nayades, Clio, Prytania, and Calliope streets, and designated by the numbers "one" and "two" on a certain plan drawn by Charles F. Zimple, deputy surveyor general, on the eighth day of April, eighteen hundred and thirty-five, and deposited in the office of Joseph B. Marks, a notary public in this city, for reference. Lot number "one" forms the corner of Nayades and Calliope streets, and measures twenty-six feet seven inches and five lines front on said Nayades street, by one hundred and twenty-five feet in depth and front on said Calliope street. Lot number "two" measures twenty-six feet seven inches and five lines front on Nayades street, by one hundred and twenty feet in depth, between parallel lines, in the rear of which lots there is an alley of fourteen feet in width, as per said plan, which is to be kept open for the common use and advantage of all the owners of the lots bordering thereon, being the same property which the said mortgager acquired by purchase from Mrs. Ann Wells, wife of Edmund W. Wells, of this city, by an act passed before Joseph B. Marks, a notary public in this city, on the seventeenth day of July last, eighteen hundred and forty-three.

And the said mortgagor doth hereby bind and obligate himself not to sell, alienate, or in any wise encumber, the above described and herein mortgaged premises, or any part thereof, to the prejudice of this mortgage.

And in order to secure still more effectually the full and punctual payment of the aforesaid four promissory notes, the said Samuel Lindsey Forgay doth moreover, by these presents, pledge and pawn, in favor of the said Robert Seaton, a certain promissory note for the sum of three thousand six hundred and ninety-four dollars and forty-four cents, drawn by Persifer F. Smith to the order of the said Forgay, dated on the twenty-seventh day of May last, and made payable on the fifteenth day of November, eighteen hundred and forty-four; which note is se-

cured by special mortgage, and vendor's privilege granted by him, the said Smith, in favor of the said Forgay, by an act passed before me, the said notary, on the said twenty-seventh day of May last, on certain immoveable property in said act particularly described, hereby subrogating the said Seaton in and to the said special mortgage, together with all the rights, privileges, recourses, and actions, thereunto belonging, or in any wise appertaining, with full authority to exercise the same in the same manner that he, the said Forgay himself, might or could have done; which note the said Samuel L. Forgay did, in the presence of me, notary, and of the undersigned witnesses, endorse over and deliver to the said Robert Seaton, who hereby acknowledges the receipt and due possession thereof.

By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, dated this day, it will appear that the said described and herein mortgaged premises are free from incumbrances, with the exception of the several mortgages in said certificate mentioned; all which the said mortgagor hereby binds and obligates himself to cause to be duly raised and cancelled as soon as practicable.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Ernest Granet and Auguste Commandeur, witnesses, of lawful age, and domiciliated in this city, who hereunto subscribed their names, together with the said parties and me, the said notary, this seventh day of December, in the year of our Lord one thousand and eight hundred and forty-three.

Original signed, SAMUEL L. FORGAY,
ROBERT SEATON.
H. B. CENAS, *Not. pub.*

E. GRANET,
A. COMMANDEUR.

I certify the foregoing to be a true copy of the original on file and record in my office. In faith whereof, I grant these presents under my signature, and the impress of my seal of office, at [L. S.] New Orleans, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and forty-four.

H. B. CENAS, *Not. public.*

Exhibit G.

STATE OF LOUISIANA,
City and parish of New Orleans:

Be it known, that on this ninth day of May, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States of America the sixty-sixth, before me, Joseph Benzaken Marks, notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Mr. Thomas Banks, of this city, who declared, that for the consideration hereinafter set forth he does, by these presents, grant, bargain, sell, and deliver, with full guarantee against all debts, liens, mortgages, suits, evictions, and incumbrances whatever, unto

William Robertson, a free man of color, also of this city, here present and accepting for himself, his heirs, and assigns, and acknowledging delivery and possession thereof, a certain piece or portion of ground, with the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the suburb Delord of this parish, in the square comprised within St. Paul, Girod, and St. Peter streets, and Julia street landing, measuring eighty-five feet front on St. Paul street, by one hundred and twenty-nine feet six inches in depth on the side nearest Girod street, one hundred and twenty-nine feet eight inches in depth on the side nearest Julia street landing, and eighty-five feet width in the rear; which portion of ground is composed of the whole of lots Nos. one hundred and fifty-five, one hundred and fifty-six, and thirty-five feet from the rear of lots Nos. one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, and one hundred and fifty-four, on the original plan drawn by L. Delafield, captain of engineers, in March, 1832, and deposited in the office of G. R. Stringer, late notary, (now that of Felix Grima,) a notary public in this city; a figurative plan of the portion of ground now sold is hereto annexed for reference, and countersigned by the parties, witnesses, and me, said notary.

And the said Banks hereby obligates himself to have put up, at his own expense, on said portion of ground, within six months from the date hereof, two one-story frame buildings, with kitchens attached thereto; the whole of the lots Nos. one hundred and fifty-five and one hundred and fifty-six were acquired by the said Banks from Nathaniel Chamberlain, by an act passed before G. R. Stringer, late a notary public in this city, on the fifteenth day of December, 1832, and the whole of the lots Nos. one hundred and fifty, one hundred and fifty-four, (with other lots,) were acquired by said Banks from the New Orleans Canal and Banking Company, by an act passed before said G. R. Stringer, late notary public in this city, on the thirteenth of April, 1832; and by reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that there are no other mortgages recorded against the said banks, on the property herein conveyed, than the following, to wit:

1st. The one he granted, per act passed before G. R. Stringer, notary, dated 13th April, 1832, in favor of the New Orleans Canal and Banking Company, on the lots Nos. 150, 151, 152, 153, 154, and others more amply described in said act, to secure twenty thousand three hundred and twenty-eight dollars; which mortgage is diminished by payment of ten thousand one hundred and sixty-four dollars, according to the records in his office; said mortgage has been reinscribed in said office, on the 1st April, 1842.

2d. The one he granted, per act passed before H. B. Cenas, notary, dated 16th December, 1836, in favor of the Louisiana Insurance Company, on the above described lot of ground, and others, to secure sixty-

five thousand eight hundred dollars; and the general ones resulting from the following judgments, to wit:

1st. One in favor of Lanor Brothers, rendered by the parish court the 25th June, 1841, for fourteen hundred dollars and costs, agreeably to said judgment.

2d. Another in favor of the New Orleans Canal and Banking Company, rendered by the same court the 22d April, 1842, against said Banks and Victor David, for twelve hundred seventeen dollars and fifty cents, with interest and costs

3d. And the last one in favor of said institution, rendered by the same court same day, for forty-eight hundred dollars, interest and costs; which mortgages the said Banks hereby obligates himself to pay and have raised within the shortest possible time.

To have and to hold the said piece or portion of ground unto the said purchaser, his heirs and assigns, for ever. And the said vendor hereby further promises that he and his heirs shall and will for ever warrant and defend the property herein conveyed against all legal claims and demands whatever; the said vendor, moreover, transfers unto the purchaser all the rights and actions of warranty to which he may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the present vendor. This sale is made for and in consideration of the price and sum of ten thousand dollars; in payment of which said purchaser has furnished his twelve several promissory notes for the sum of eight hundred and thirty-three dollars thirty-three and one-third cents each, dated this day, drawn to his own order, and by him endorsed and payable, respectively, at six, twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, sixty, sixty-six, and seventy-two months after date, and which said notes, if not punctually paid at maturity, it is especially agreed between the aforesaid parties, are to bear an interest, from and after said maturity, at the rate of ten per centum per annum until final payment; without, however, giving said purchaser the right of delaying said payments; which notes, after having been paraphed ne varietur by me, notary, for the purpose of identifying them herewith, were delivered to the present vendor, who hereby acknowledges the receipt thereof.

And in order to secure the full and punctual payment of said notes at maturity, and of the interest that may accrue thereon after maturity, as aforesaid, the property herein conveyed is hereby specially mortgaged, the purchaser binding himself and his heirs not to sell, alienate, deteriorate, or incumber the same, to the prejudice of this act.

And the said purchaser hereby obligates himself to have said buildings insured up to the amount of five thousand dollars, and keep the same insured until the full and entire payment of all the notes given by him as aforesaid, and to have the policy or policies transferred unto him, said Banks.

And now to these presents personally came and intervened Madam Charlotte Foggarty, of lawful age, and wife of the said Thomas Banks, who did declare unto me, notary, that it is her wish and intention to

release, in favor of the said purchaser, his heirs, and assigns, the property herein conveyed, from any rights, claims, mortgages, or privileges, to which she may be entitled, or otherwise.

Whereupon I, the said notary, did inform the said wife, apart and out of the hearing of her said husband, that she had by law a legal mortgage on the property of her said husband. First. For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. Secondly. For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected. Thirdly. For nuptial presents. Fourthly. For debts by her contracted with her said husband; and, Fifthly. For the amount of her paraphernal property alienated by her, and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent of the rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any nature or kind whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Thomas Banks, being now present, aiding and authorizing the said Mrs. Charlotte Banks in the execution of these presents, she, the said wife, did again declare that she did, and does hereby, make a formal renunciation and relinquishment of all her said rights, claims, and privileges, in favor of the said purchaser, his heirs, and assigns, binding herself and her heirs, at all times, to acknowledge and sustain the validity of this renunciation.

Thus done and passed, at New Orleans aforesaid, in the presence of Daniel J. Ricardo and Theophilo Commager, witnesses, both of this city, who hereunto sign their names, with the parties and me, the said notary, on the day, month, and year above written.

(The said purchaser, not knowing how to write or sign his name, has made his mark, after the same had been read and fully explained to him by me, notary, in presence of the witnesses. This approved.)

Original, signed: WILLIAM his X mark ROBERTSON.

THOMAS BANKS,
C. BANKS.

D. J. RICARDO,
THEO. COMMAGER.

JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this twenty-fifth day of March, 1844. [L. s.]

J. B. MARKS, *Not. Public.*

Exhibit H.

STATE OF LOUISIANA.

City and parish of New Orleans:

Be it known, that, on this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States of America the sixty-sixth, before me, Joseph Benzaken Marks, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Mr. Thomas Banks, of this city, who declared, that, for the consideration hereinafter set forth, he does, by these presents, grant, bargain, sell, and deliver, with full guarantee against all debts, liens, mortgages, suits, evictions, and encumbrances whatever, unto Mr. William Whitla, also of this city, here present, and accepting for himself, his heirs and assigns, and acknowledging delilivery and possession thereof, two certain lots of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in the suburb Delord of this parish, and forming part of a tract of land purchased by the New Orleans Canal and Banking Company from Mrs. Louise Delord Sarpy, wife of Dominique François Burthe, by act passed before G. R. Stringer, late a notary public in this city, on the twenty-fifth of May, 1831, and designated by the numbers three hundred and twenty-nine and three hundred and thirty, on a plan drawn by R. Delafield, captain of engineers, and engineer for said company, dated in March, 1832, and deposited in the office of said G. R. Stringer, late notary, (now of Felix Grima, notary;) said lots adjoin each other, and measure, together, eighty-five feet front on Covington landing, twenty-seven feet front on Pensacola landing, by a depth of one hundred and ninety-six feet, and about fifty feet width in the rear; which property was acquired by the said Banks from the New Orleans Canal and Banking Company, by an act passed before the said G. R. Stringer, notary, in this city, on the thirteenth April, 1832; and by reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears that there are no other mortgages recorded against the said Banks on the property herein conveyed than the following, to wit: first, the one granted per act passed before G. R. Stringer, notary public, on the 13th April, 1832, in favor of the New Orleans Canal and Banking Company, on said lots and others, to secure twenty thousand three hundred and twenty-eight dollars, which mortgage has been diminished by payment of ten thousand one hundred and sixty-four dollars. Said mortgage has been inscribed in this office, on the 12th May, 1832, and reinscribed on the first of April, 1842. Second, the one he granted per act passed before H. B. Cenas, notary,

on the 16th of December, 1836, in favor of the Louisiana Insurance Company, on said lots and others, to secure sixty-five thousand eight hundred dollars of shares of stock of said company. Third, the general one in favor of Lanor Brothers, resulting from a judgment rendered by the parish court, on the 25th of June, 1841, by which said Banks has been condemned to pay to the plaintiffs the sum of seven hundred dollars, amount of a note mentioned in said judgment, and to deliver to the said plaintiffs a note of seven hundred dollars; and, in default of delivering the same, to pay another sum of seven hundred dollars, and also the costs. Fourth, the general one in favor of the New Orleans *and* Canal and Banking Company, resulting from a judgment rendered by the parish court, on the 22d April, 1842, vs. V. David and Thomas Banks, in solido for twelve hundred and seventeen dollars and forty cents, with interest and costs. And, fifth, the general one in favor of the New Orleans Canal and Banking Company, resulting from a judgment rendered by the parish court, on the 22d of April, 1842, for four thousand eight hundred dollars, with interest and costs; which mortgages the said Banks obligates himself to have cancelled within the shortest possible time.

To have and to hold the said property unto the said purchaser, his heirs and assigns, forever; and the vendor hereby further promises that he and his heirs shall and will forever warrant and defend the property herein conveyed against all legal claims and demands whatever.

The said vendor, moreover, transfers unto the said purchaser all the rights and actions of warranty to which he may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the present vendor. This sale is made for and in consideration of the price and sum of seven thousand dollars, in payment of which said purchaser has furnished his three several promissory notes for the sum of twenty-three hundred and thirty-three dollars thirty-three and one-third cents each, dated this day, drawn to his own order, and by him endorsed, and payable one, two, and three years after date; and which said notes, if not punctually paid at maturity, it is expressly agreed between the aforesaid parties are to bear an interest, from and after said time, at the rate of ten per cent. per annum, until final payment, without, however, giving the said purchaser the right of delaying the payment of the same beyond the days of their falling due; which notes, after having been paraphed "ne varietur" by me, notary, for the purpose of identifying them herewith, were delivered to the said vendor, who hereby acknowledges the receipt thereof.

And in order to secure the full and punctual payment, at maturity, of the said promissory notes, (together with the interest which may eventually accrue thereon,) the said purchaser doth hereby mortgage and specially hypothecate the said property in favor of his said vendor, or of any holder of said notes, promising not to sell, alienate, or encumber the same to the prejudice of this mortgage.

And now to these presents personally came and intervened Madam Charlotte Foggarty, of lawful age, and wife of the said Thomas Banks, who did declare unto me, notary, that it is her wish and intention to release in favor of the said purchaser, his heirs and assigns, the property herein conveyed, from any rights, claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with said seller, or otherwise.

Whereupon I, the said notary, did inform the said wife, apart and out of the hearing of her said husband, that she had by law a legal mortgage on the property of her said husband. First, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. Secondly, for the restitution and reinvestment of the dotal property, by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by her contracted with her said husband. And, fifthly, for the amount of her paraphernal property, alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent of the rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges herein before enumerated and described, but all others, of any nature or kind whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Thomas Banks, being now present, aiding and authorizing the said Mrs. Charlotte Banks in the execution of these presents, she, the said wife, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said rights, claims, and privileges, in favor of the said purchaser, his heirs and assigns, binding herself and her heirs at all times to acknowledge and sustain the validity of this renunciation.

Thus done and passed, at New Orleans aforesaid, in the presence of Daniel J. Ricardo and Theophile Commager.

Witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, on the day, month, and year above written.

(Original signed.)

THOMAS BANKS,
C. BANKS,
WM. WHITLA,

D. J. RICARDO,
THEO. COMMAGER.

JOS. B. MARKS, *Not. public.*

I certify the foregoing to be a true copy of the original act extant in my current register. In witness whereof, I grant these presents, [L. S.] under my signature and seal of office, at New Orleans, this twenty-fifth day of March, 1844.

JOS. B. MARKS, *Not. public.*

Exhibit I.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day, before me, Joseph Benzaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared William Whitla, of this city, unmarried, who declared that, for the consideration hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto George Allan, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, two certain lots of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the suburb Delor of this parish, and forming part of a tract of land purchased by the New Orleans Canal and Banking Company, from Mrs. Louise Delord Sarpy, wife of Dominique François Burthe, per act passed before G. R. Stringer, notary in this city, on the twenty-fifth of May, 1831, and designated by the Nos. three hundred and twenty-nine and three hundred and thirty, in a plan drawn by R. Delafield, captain of engineers, and engineer for said company, dated in March, 1832, and deposited in the office of said Stringer, notary, (now that of Felix Grima, notary.) Said lots adjoin each other, and measure, together, eighty-five feet front on Covington landing, twenty-seven feet front on Pensacola landing, by a depth of one hundred and ninety-six feet, and about fifty feet width in the rear—being the same property which the present vendor acquired from Thomas Banks by an act passed before me, notary, on the twenty-fourth of May last, 1842.

And now said vendor declared, that the only mortgage existing on said property is the one he granted in favor of Thomas Banks, his vendor, by the act of sale aforesaid, to secure the sum of seven thousand dollars, and eventual interest at the rate of ten per cent. per annum, which mortgage the present purchaser assumes, as will hereinafter appear. With which declaration, the present purchaser declares himself satisfied, and dispenses with the production of a certificate, as required by article 3,328 of the civil code of this State, and exonerates the undersigned, notary, from all liability for passing this act without said document.

To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns, to their proper use and behoof for-

ever; and the said vendor, for himself and his heirs, the said property and appurtenance to the said purchaser, his heirs and assigns, shall and will warrant, and forever defend [against] the lawful claims of all persons whomsoever, by these presents: and the said vendor does, moreover, subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done. This sale is made and accepted for and in consideration of the price and sum of seven thousand dollars; in payment of which he, the said purchaser, shall, as he hereby does, put himself in the place and stead of said vendor, and assume, as he hereby does assume, to pay to his acquittance, as well three certain promissory notes drawn by him, said vendor, to his own order, and by him endorsed, for the sum of twenty-three hundred and thirty-three dollars thirty-three cents and one-third cent each, dated the twenty-fourth of May, 1842, secured by mortgage by a clause in his act of purchase aforesaid, and payable, respectively, at one, two, and three years after date, with interest thereon, after maturity, at the rate of ten per cent. per annum, as the reversion of the mortgage by which the payment of the same are secured.

Thus done and passed, in my office, in the city of New Orleans aforesaid, in the presence of Daniel J. Ricardo and Theophile Commager, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this eighteenth day of April, in the year one thousand eight hundred and forty-three.

Original signed,

W. WHITLA,
GEO. ALLAN.

D. J. RICARDO,
THEO. COMMAGER.

JOS. B. MARKS, *Not. public.*

I certify the foregoing to be a true copy of the original act extant in my current register. In faith whereof, I grant these presents, [L. S.] under my signature and seal of office, at New Orleans, this twenty-fifth of March, 1844.

J. B. MARKS, *Not. public.*

Exhibit K.

STATE OF LOUISIANA, *city and parish of New Orleans:*

Be it known, that on this first day of June, in the year one thousand eight hundred and forty-two, and of the independence of the United States of America the sixty-sixth, before me, Joseph Benzaken Marks, notary public, in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Mr. Thomas Banks of this city, who declared, that for the consideration hereinafter set forth he does, by these presents, grant, bargain, sell, and deliver, with full guarantee against all debts, liens,

mortgages, suits, evictions, and incumbrances whatever, unto Mr. George Allan, also of this city, here present, and accepting for himself, his heirs, and assigns, and acknowledging possession thereof, all and singular those two lots of ground, situate, lying, and being on the batture in front of suburb Livaudais, parish of Jefferson, in this State, and designated by the letters A C and A D, on the original plan of said suburb deposited in the office of G. R. Stringer, late a notary public in this city, (now that of Felix Grima,) in the squares comprised within Washington, Sixth, Levee, and new Levee streets; said lots having English measure each forty-six feet front on Levee street, between Washington and Sixth streets, and have in front forty-four feet nine inches and six lines; the depth of said lot A C, from Levee street to the river, being two hundred and fifteen feet, and the depth of the lot A D is, on the side where it adjoins said A C, two hundred and fifteen feet, and on the side where it adjoins A E two hundred and fifteen feet six inches; together with all the rights of the batture in front of the same, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining; which property was acquired by the present vendor from Daniel Boyle, by an act passed before Carlile Pollock, a notary public in this city, on the twenty-ninth day of May, 1833.

And now, the said purchaser declared that, being satisfied that said property is free from encumbrance, he dispenses with the production of a certificate as required by article 3328 of the civil code of this State, and exonerates the undersigned notary from all liability for passing this act without said document.

To have and to hold the said property unto the said purchaser, his heirs, and assigns for ever.

And the said vendor hereby further promises that he and his heirs shall and will forever warrant and defend the property herein conveyed against all legal claims and demands whatever.

The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty, to which he may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the present vendor.

This sale is made and accepted for and in consideration of the price and sum of ten thousand dollars, in payment of which said purchaser has furnished his three several promissory notes, for the sum of three thousand three hundred and thirty-three dollars thirty-three and one-third cents each, dated this day, drawn to the order of said vendor, and payable, respectively, at one, two, and three years after date, with interest thereon from maturity, at the rate of ten per cent. per annum, without, however, giving the purchaser the right of delaying the payment of the same beyond the days of their respectively falling due; which notes, after having been paraphed ne varietur by me, notary, for the purpose

of identifying them herewith, were delivered to the present vendor, who hereby acknowledges the receipt thereof.

And in order to secure the full and punctual payment, at maturity, of the said three promissory notes, (together with interest,) which may eventually accrue thereon, the said purchaser doth hereby mortgage, and specially hypothecate the said property in favor of his said vendor, or of any holder of said notes, promising not to sell, alienate, nor encumber the same to the prejudice of this mortgage.

And now to these presents personally came and intervened Madam Charlotte Foggarty, of lawful age, and wife of Thomas Banks, who did declare unto me, notary, that it is her wish and intention to release, in favor of the said purchaser, his heirs and assigns, the property herein conveyed, from any rights, claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with said seller or otherwise.

Whereupon I, the said notary, did inform the said wife, apart and out of the hearing of her said husband—First. For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. Secondly. For the restitution and reinvestment of the dotal property by her acquired since marriage; whether by succession or donation from the day the succession was opened or the donation perfected. Thirdly. For nuptial presents. Fourthly. For debts by her contracted with her said husband. And, fifthly. For the amount of her paraphernal property, alienated by her, and received by her said husband, and otherwise disposed of for the individual interest of her said husband. And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature or kind whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana. And the said Thomas Banks being now present, aiding and authorizing the said Charlotte Banks in the execution of these presents, she the said wife did again declare, that she did and does hereby make a formal renunciation and relinquishment of all her said rights, claims, and privileges in favor of the said purchaser, his heirs and assigns, binding herself and her heirs at all times to acknowledge and sustain the validity of this renunciation. Thus done and passed, at New Orleans as aforesaid, in the presence of D. J. Ricardo, and T. Commagere, witnesses, both of this city, who hereunto sign their names with the parties, and me, the said notary, on the day, month, and year above written.

Original signed,

[SEAL.]

D. J. RICARDO,
THEO. COMMAGERE.

THO. BANKS,
C BANKS,
GEO. ALLAN,
JOS. B. MARKS, *Not. public.*

In the circuit court U. S. eastern district of Louisiana. In equity.

FRANCIS B. CONRAD, assignee,
vs.
WELLS and wife, Banks and others.

It is consented that exhibit L may be filed, on or before the first Monday in November proximo, "nunc pro tunc."

M. M. COHEN,
RANDELL HUNT.

New Orleans, 30 *October*, 1844.

Exhibit L.

Being extracts from the pass book of George Allan, produced in evidence, and filed in the district court of the State in the case of the City Bank vs. Banks and Wife.

1841.		
June 17	Balance	$3 50
Nov. 5	J. H. Caldwell, (returned)	
1843.		
Jan'y 10	J. Duplessis, (returned)	926 07
" 24	A. C. Whitmarsh	400 00
" 24	J. R. Borgstead	325 00
" 24	Norman, Steele & Co.	450 00
" 24	Taylor & Hadden	225 00
Feb'y 15	Cash	921 00
" 23	Bridget Fenny, (ret. acc.)	812 50
" 23	M. Kling	290 00
March 30	John Collum, 400 00—4 13	395 17
" 31	Cash	750 00
April 1	Do.	603 30
		4,363 67
" 1	J. W. Pritchard	250 00
" 1	Do.	250 00
" 15	Cash	1,000 00
" 15	J. Hewlett, 2,000 returned	
" 15	J. R. Borgsted	325 00
" 15	Taylor & Hadden	225 00
" 15	Norman, Steele & Co.	450 00
" 15	M. Kling	290 00
" 21	Cash	500 00
" 28	Do.	500 00
" 29	Do.	100 00
		$8,253 67
	Balance	$3,542 30

Exhibit L—Continued.

	Balance - - - - -	$3,542 30
April 16	Cash - - - - -	103 00
" 20	Do. - - - - -	150 00
" 22	Do. - - - - -	200 00
		$3,995 30
June 27	Cash - - - - -	1,060 00
July 3	Do. - - - - -	136 87
" 22	Do. - - - - -	195 00
" 31	Do. - - - - -	400 00
		$5,727 17
Aug. 28	Balance - - - - -	241 08
Oct. 2	Cash - - - - -	500 00
" 26	Sam. Dana, 375 00—3 25 - -	371 75
Nov. 22	Cash - - - - -	233 33
" 29	Do. - - - - -	2,000 00
" 29	S. S. Brown - - - -	64 37
Feb'y 10	Do. 64 37 - - -	
		3,410 53
" 12	Balance - - - - -	708 98
" 17	Cash - - - - -	190 30
March 7	Do. - - - - -	300 00
		$1,199 28

Transferred to new book.

United States of America, to Ann Foggarty, otherwise called Ann Wells, and Edmund W. Wells, her husband, Samuel L. Forgay, Thomas Banks, William Whitla, William Robertson, free man of color, and George Allan, all of the city of New Orleans, and State of Louisiana, greeting:

For certain causes offered before us in chancery in the circuit court of the United States for the eastern district of Louisiana, we command and strictly enjoin you, that, laying all other matters aside, and notwithstanding any excuse, you personally appear before us, at the clerk's office of the said circuit court of the United States for the eastern district of Louisiana, on the first Monday of June next, to answer to those things which shall then and there be objected to you, on the part of Francis B. Conrad, assignee of Thomas Banks, complainant, in a cer-

tain bill of complaint filed in the said office, and to do further and receive what the said court shall have considered in this behalf; and this you are in no wise to omit, under penalty of ten thousand dollars, and have there this writ.

Witness the honorable Roger B. Taney, chief justice of the said United States, this sixth day of May, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.]

For DUNCAN N. HENNEN, *Clerk.*
J. Q. A. HOIT, *Dep. Cl'k.*

Memorandum.

The above defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken *pro confesso.*

Clerk's office of the United States, circuit court for the eastern district of Louisiana. 6th May, 1844.

J. Q. A. HOIT, *Dep'ty clerk.*

Marshal's return.

Received May 7th, 1844, and the copies of the within summons in chancery were served as follows, viz: Edmond W. Wells left at usual places of doing business; Samuel L. Forgay served in person on the 7th May, 1844; Thomas Banks served by leaving the same in the hands of his wife at his domicil on the 13th instant, May, 1844; George Allan served in person on the 8th instant, May, 1844; William Whitla served in person on the 14th instant, May, 1844; William Robertson, F. M. C., served in person on the 14th instant, May, 1844.

A. SIDNEY ROBERTSON,
U. S. Marshal.
By WM. K. STYLES,
Dy. U. S. Marshal.

And afterwards, to wit, on the fourth day of November, A. D. 1844, came the respondents, Ann Fogarty, wife of Edmond W. Wells, Edmond W. Wells, and Sam'l L. Forgay, in the clerk's office of said court, by their solicitor, R. Hunt, esq., and filed their joint and several answer to the complainant's bill, which is as follows:

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

In chancery.

The joint and several answer of Ann Fogarty, formerly widow of Henry Hutton, and now the wife of Edward W. Wells, of the said *of the said* Edward W. Wells, her husband, and of Samuel L. Forgay[1] three of the defendants to the bill of complaint of Francis B. Conrad, assignee of Thomas Banks, a bankrupt, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves and each of them all manner of benefit and advantages of exception, which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said

bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is, or are, material or necessary for them or any of them to make answer unto, answer and say: that they have been informed, and admit it to be true, that Thomas Banks was duly declared a bankrupt, and the complainant was appointed assignee of his estate, in manner and form as in the complainant's said bill of complaint is mentioned and set forth, and that Edmond W. Wells, one of the defendants, was duly declared a bankrupt in the month of June, 1842, as is set forth and mentioned in said bill of complaint. And these defendants further answering, severally admit, that the said Thomas Banks did, on the second day of May, 1842, convey to Ann Wells, one of these defendants, the two lots of ground and the three slaves mentioned in the said bill of complaint, and in the exhibit B, filed with said bill; and that the said Ann Wells did convey the said two lots and the said three slaves to Samuel L. Forgay, another of these defendants, by an act passed on 17th July, 1843, a copy of which has been filed by complainant as exhibit C. But these defendants severally and specially deny all the charges made against them, or either of them, in relation to said conveyances and sales, and aver that the same were made in good faith, and for a just and lawful consideration; that the sale to Samuel L. Forgay was not simulated, feigned, and covinous, as is charged by complainant's bill, but is true, just, and real; and that the same was made for a valuable consideration, as set forth in complainant's exhibit C.

And this defendant, Samuel L. Forgay, further severally answering saith, that he admits he entered into the contract with Robert Seaton for the erection of certain buildings, a copy of which contract has been filed with complainant's bill, and marked exhibit F; but he denies that said contract was for any person's benefit or use save his own. And he avers that, having purchased the two lots on which said buildings were erected for a valuable consideration, without any knowledge or intimation of any defect in, or objection to, the title thereof, and believing himself to be, as he now believes and alleges himself to be, seised and entitled, as well in law as in equity, to the absolute ownership of said lots, he caused the buildings to be erected thereon for his own sole profit, advantage, and use, with his own proper means and funds.

And this defendant, Samuel L. Forgay, further answering saith, that he admits he purchased from William L. Florance a certain square of ground in Livaudais, and that he subsequently sold the same, to wit, on the 27th May, 1843, to Persifer F. Smith; the purchase from said Florance having been made on the 27th July, 1842, as is set forth and mentioned in the said bill of complainant; and that the considerations and terms on which said purchase and sale were consummated are truly set forth in the notarial acts, conveying the said property; copies of which acts are on file with complainant's bill in this suit, and marked D and E; but this defendant, Samuel L. Forgay, solemnly protests and avers, that the various funds and means employed by him in these transactions, were his own *bona fide* property,

lawfully and justly acquired for his own use; and were not, as is falsely and slanderously charged in complainant's bill, fraudulently conveyed, transferred, and made over to him on any trust, secret or open, verbal or written, tacit, express, or implied.

And this defendant, Samuel L. Forgay, further severally answering to the interrogatories which he has been required to answer particularly:

To the 4th interrogatory saith: that Edmond W. Wells and Ann Wells, his wife, two of these defendants, have occupied the brick house at the corner of Nayades and Calliope streets, particularly described in complainant's bill, ever since its completion in December, 1843, as this defendant's lessees or tenants.

To the 5th interrogatory saith: that the sale from Ann Fogarty, otherwise called Ann Wells, to him was not feigned and simulated; that he purchased the two lots of ground at the corner of Nayades and Calliope streets, and the three slaves, referred to in complainant's bill, for a valuable consideration, to wit, the two lots for $1,500 each, and the three slaves for $500 each, making in all $4,500, for which he gave his three several promissory notes for $1,500 each, secured by mortgage, and payable in six, twelve, and eighteen months; that one of the said notes was paid by him at the City Bank of New Orleans, on or about the 20th January last; the second was paid by him to E. W. Wells, husband of the said Ann Wells, in July last; and that the third note is not yet due; that this is the true and only consideration given by him for the said property; that he derived, and expects to derive, no part of it from Thomas Banks, or any other person; and that there neither exists, nor has ever existed, any secret trust, agreement, or understanding, express or implied, written or verbal, in relation thereto.

To the 6th interrogatory saith: that there was no simulated act of sale from Ann Foggarty, otherwise called Ann Wells, to him, this respondent; that he purchased in good faith, for a valuable consideration, as already answered by him, without any notice or express knowledge of the bankruptcy of Thomas Banks; that he had reason to know, suspect, and believe, that Edmund W. Wells had applied for the benefit of the bankrupt law before the 17th July, 1842, but that he had no reason to believe the same of Mr. Banks, although this respondent was at that time a resident of New Orleans.

To the 7th interrogatory saith: That he did cause a large brick house to be built, in the fall of 1843, on the two lots of ground at the corner of Nayades and Calliope streets, and leased the same to E. W. Wells; that the contract made by him with Robert Seaton was made for this respondents' own benefit and use, without any participation, concurrence, or contrivance on the part of Thomas Banks, or any other person; that this respondent has paid out of his own proper moneys and funds for this building and the other improvements on these lots; that he has never any secret or confidential transactions with Thomas Banks, nor any business transactions with him, but in the way and regular course of this defendants' occupation and employment, in paving the streets on which said Banks owned property, except that in the year

1842 this defendant, having some funds by him lying idle, and learning that said Thomas Banks was in great want of money, he purchased some rent notes from the said Banks.

To the 8th interrogatory saith: That he has already partly answered the same in his answer to the last interrogatory; that he did purchase a lot in Livaudais, from Wm. Florance, as hereinbefore admitted; that the said purchase was not for the benefit or use of Thomas Banks, but for this respondent's own personal profit and advantage, and without any trust, agreement, or understanding whatsoever, in relation to any third person; that the consideration paid by this respondent consisted of a note of P. P. Rea, in favor of Thomas Banks, for $833 33⅓; a note of J. S. Pritchard for $683 33⅓; one of Patsey Shall for $3,125; one of W. H. Whitmarsh for $400; all rent notes, endorsed by Thomas Banks, and purchased by this defendant in the year 1842, as stated in the answer to the 7th interrogatory; and of three promissory notes of $2,652 78, drawn by this respondent and endorsed by E. W. Wells and by Thomas Banks, as is more fully set forth in complainants' exhibit D; that these notes have been duly paid as they fell due, and those only remain unpaid which are not yet due, and that they have been paid, satisfied, and provided for without any aid, assistance, proceeds, or use of any property of the said Thomas Banks; that this defendant sold said lot in Livaudais, in the spring of 1843, to P. F. Smith for $12,000, the said Smith assuming the payment of the notes originally issued by this defendant, and giving his own note for the balance, viz., $3,694 44; that the said note was given in payment to R. Seaton, in conformity with the building contract of this defendant with him, as will more fully appear from the exhibit E and F, filed by complainant and acknowledged to be correct by this defendant; and that there has been no simulation, no private agreement, understanding, or trust of any kind, in relation to the matters set forth in this interrogatory No. 8, put by the complainant; and that in all these transactions this defendant has bought and sold with his own funds and means, in good faith, on his own sole risk and account, and without any understanding or connection with the said Thomas Banks.

To the 14th interrogatory the defendant answers: That he has never, at any time whatsoever, before or since the 27th April, 1842, or at that time, received from Thomas Banks any money, goods, chattels, or property, without consideration; nor has he ever received any money, goods, chattels, or property belonging to, or for and on account of said Banks, without consideration; or on any agreement, or understanding to secure the same, or the proceeds thereof, to Thomas Banks, or any other person or persons.

And this defendant, Edmund W. Wells, further answering severally for himself.

To the second interrogatory saith: He was declared a bankrupt in June, 1842.

To the 14th interrogatory saith: That some time in the month of July, 1842, Thomas Banks, prior to his application for the benefit of the

bankrupt act, placed in this respondent's hands rent notes to the amount of $19,000 or thereabouts, which he requested this respondent to collect; that this defendant collected about $11,000 of this amount; that the balance of the notes were protested, and that the whole amount was paid over, the money collected, as well as the protested notes, by this defendant to said Banks in the fall of 1842; that the said Thomas Banks informed this defendant, soon after placing the notes in his hands for collection, that he was going into bankruptcy; that in his opinion, and that of the complainants, his estate would more than pay his debts, and that he wanted the notes placed in this defendant's hands to be collected for the purpose of returning borrowed moneys, which he wished to pay before the settlement of his estate could be finally accomplished; that this defendant has never received any other funds, money, or property of any kind whatsoever, confidentially or otherwise, to dispose or use, or keep or transfer the proceeds of, to the said Henry Banks or any other person.

And this defendant, Ann Wells, wife of Edmund, further severally answering to the interrogatories propounded to her.

To the 3d interrogatory saith: That the slaves Maria, Ben, and Mary have remained in her service since the 17th July, 1843, but that she knows nothing of the terms on which they have been used, since the sale to Samuel L. Forgay; she has heard her husband say they were hired.

To the 4th interrogatory saith: That she has resided in the brick house, corner of Calliope and Nayades streets, since its completion in December last.

And these defendants deny all and all manner of unlawful combination and confederacy, fraud and conspiracy, in the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

RANDELL HUNT,
Defendants' solicitor.

A. WELLS,
E. W. WELLS,
SAMUEL L. FORGAY.

CIRCUIT COURT OF THE UNITED STATES,
Fifth judicial circuit and district of Louisiana:

Personally appeared before me, the undersigned deputy clerk of the court aforesaid, Edward W. Wells and Ann Foggarty, the respondents

in the within and foregoing answer, who being duly sworn, severally deposed and said, that all the matters and facts contained in said answer, as therein alleged, of their own knowledge are true, and those alleged as derived from the information of others, they believe to be true.

E. W. WELLS,
A. WELLS.

Sworn to and subscribed, before me, at New Orleans, this 25th day of November, A. D. 1845.

F. N. HARALSON, *Dy. Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit, district of Louisiana.

This day personally appeared before me, the undersigned, district judge of the United States for the district of Louisiana, Samuel L. Forgay, one of the respondents to the within and foregoing answer, who being by me duly sworn, deposed and said, that all those matters and things, set forth and charged in said answer from his own knowledge, are true, and those set forth and charged as derived from the knowledge and information of others, he believes to be true.

SAMUEL L. FORGAY.

Sworn and subscribed, before me, at the city of New Orleans, this 18th day of February, A. D. 1846.

THEODORE H. McCALEB,
U. S. Judge.

And afterwards, to wit, on the 4th day of November, A. D. 1844, came the defendants Thomas Banks, Wm. Robertson, (f. m. c.,) Wm. Whitla and George Allan, by their solicitor M. M. Cohen, esq., in the clerk's office of said court, and filed their answer to said complainants, which is as follows, to wit:

In chancery.

In the circuit court of the United States for the district of Louisiana:

The answers of Thomas Banks, William Robertson, (f. m. c.,) William Whitla and George Allan, four of the defendants to the bill of complaint of Francis B. Conrad, assignee of Thomas Banks, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many untruths, errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, and denying all the statements and charges therein not hereinafter admitted; for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering, say:

Thomas Banks, answering to interrogatory No. 1 in the said com-

plainant's said bill of complaint contained, says, that he did petition for the benefit of the bankrupt, and was thereupon declared bankrupt in the manner set forth in said complainant's said bill of complaint; that Francis B. Conrad was appointed his assignee, and the said proceedings in bankruptcy have not been finally settled and closed.

William Robertson, (f. m. c.,) answering to interrogatory No. 9 in the said complainant's said bill of complaint contained, says, that Thomas Banks did convey to him the said lot in the suburb Delord, described in said complainant's said bill, on the ninth day of May, in the year eighteen hundred and forty-two.

his
WILLIAM × ROBINSON.
mark.

Temoin, MANUEL L. SANTOS,
LOUIS D. MORANT.

William Whitla, answering to the interrogatory No. 10 in the said complainant's said bill of complaint contained, says, that the said Thomas Banks did convey to him the two lots situate in the suburb Delord; that the said conveyance was made on the twenty-fourth day of May, in the year eighteen hundred and forty-two, and upon the terms and conditions in the said act of sale filed with said complainant's said bill of complaint expressed, except that instead of this defendant's paying $3,000 cash, he paid $1,000 in money and $2,000 arrear of salary due him by said Banks.

But this defendant doth not now claim any rights, title, or interest of, in, or to the said lots, and doth disclaim the same; for that because afterwards, finding that said Banks had failed in business, this defendant demanded of said Banks to retake said property, and to pay to this defendant the $1,000 which this defendant had paid to him in cash, and the $2,000 due for this defendant's arrears of salary, as this defendant was then unwilling longer to possess a property on which the Canal Bank had a mortgage for $4,000, as that mortgage against him would prevent this defendant's going into business; that thereupon the said Banks agreed to pay this defendant said sums, and to retake said property; which, shortly after, at the request of said Banks, this defendant conveyed to George Allan.

WM. WHITLA.

George Allan, answering to interrogatory No. 11 in the said complainant's said bill of complaint contained, says, that the two lots of ground lying and being on the batture in front of suburb Livaudais, parish of Jefferson, State of Louisiana, in complainant's said bill of complaint more particularly described, were purchased by him in good faith, and were not conveyed to him in furtherance and pursuance of the understanding and agreement by and between himself and the said Thomas Banks, in said complainant's said bill of complaint set forth, nor by any other agreement or understanding, written or verbal, express or implied, but that contained in the notarial act of sale of said 2 lots,

except that he paid $5,000 and not $10,000—the larger amount being stated to induce purchasers to give more for them than they would if the true amount were set forth in the act; that said act of sale is not simulated, but that the said 2 lots were conveyed to him at the time, and by the deeds, and upon the terms and conditions set forth in said act of sale of said 2 lots, except as to the price he paid, which was $5,000 and not $10,000, as he hath hereinbefore explained.

To the 12th interrogatory in complainant's said bill of complaint contained, the defendant, George Allan, answering, says, that the act of sale filed with said complainant's said bill of complaint, and marked exhibit K, was not feigned and simulated, that he gave, really and in good faith, valuable consideration therefor, to wit, the sum of $5,000; the act of sale filed with said complainant's bill of complaint, and marked exhibit I, was feigned and simulated; that he did not give any valuable considerations therefor; that the same was taken in his name at the verbal instance and request of the said Thomas Banks; that it was not, so far as he knows, for the purpose of covering and concealing the said immoveable property, in the said act of sale described, from the creditors of said Thomas, nor upon any secret trust, or agreement, or understanding, written or verbal, express or implied, except that he supposed and supposes he was to reconvey said property to said Banks whenever thereunto by him requested; that said title was not so taken by the defendant, in fraud of the creditors of said Banks, and contrary to law, as it was done long after said Banks had gone into bankruptcy, and had received, as this defendant believes, a certificate of discharge from all his debts.

To the 13th interrogatory in said complainant's said bill of complaint contained, the defendant, George Allan, answering, says, that he received, at four different dates in the year 1841, up to about the 28th day of April, A. D. 1842, and at no other time or times, from the said Thomas Banks, but never from any other person or persons acting in his behalf, or by his contrivance or authority, sundry and divers promissory notes, usually called rent notes, of sundry and divers persons before that time tenants of said Thomas Banks, and by them, respectively, to him, before that time, given for the rent, use, and occupation of premises by them respectively rented, used, or occupied, and to him, the said Thomas Banks, belonging, in the statement or list filed with said complainant's bill of complaint, and marked L, among other things more particularly described, that the said notes were endorsed by the said Thomas Banks to the said George Allan, and by him, the said George Allan, collected in part; and that he gave valuable consideration to the said Thomas Banks therefor, to wit, the sum of $7,400, viz: $3,400 in cash, and $4,000, being the sum due by said Thomas Banks to him for money loaned in various sums from time to time in A. D. 1840, at the time he was building the National Hotel; that the sum or sums so collected on the same amounted to $6,500; that the said list, marked exhibit L, is a true copy of the bank book, customers' book, or pass book of said George Allan with , wherein

the said notes were by him deposited in his own name for collection, and that the same were in fact in part collected, and the amount drawn, by him from the said Bank.

To the 14th interrogatory he answering says, that no other property, moveable or immoveable, of any kind soever, corporeal or incorporeal, nor any rights, credits, bills, bonds, promissory notes, stocks or choses in action, have come to his hands from the said Thomas Banks, without consideration, at any time since the 27th day of April, A. D. 1842, or at any other time.

And these defendants, Thomas Banks, William Robertson, (f. m. c.) William Whitla, and George Allan deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said bill of complaint contained, (material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied,) is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS BANKS,
his
WILLIAM × ROBERTSON,
mark,
WM. WHITLA,
GEORGE ALLAN,
M. M. COHEN,
Def'ts solicitors.

Witness, MANUEL L. SANTOS,
Temoin, H. JUDSON.

Circuit court of the United States, fifth circuit, district of Louisiana:

Personally came and appeared before me, the undersigned commissioner of the United States for the district of Louisiana, Thomas Banks, William Robertson, and George Allan, the respondents in the within and foregoing answer, who severally deposed and said, that those matters and facts contained in their answer of their own knowledge are, and those set forth and charged as derived from the knowledge of others they believe to be, true. GEORGE ALLAN.

Sworn to and subscribed, before me, at New Orleans, this 18th day of February, A. D. 1846.

In chancery.

In the fifth circuit court of the United States for the eastern district of Louisiana:

FRANCIS B. CONRAD, assignee,
vs.
WELLS AND WIFE, FORGAY, BANKS, et al.

The replication of Francis B. Conrad, assignee, to the several an-

swers of Ann Fogarty, otherwise called Ann Wells, Edmond W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, (f. m. c.,) and George Allan.

This repliant, saving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith: that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said several answers of the defendants are uncertain, untrue, and that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove *and prove* as this honorable court shall award; and humbly prays, as in and by his said bill he hath already prayed, &c.

RICHARD H. WILDE,
Complainant's solicitor.

Afterwards, to wit, on the twenty-third of November, A D. 1844, the following notice of the filing of interrogatories issued to the defendants by complainant:

Circuit court of the United States for the eastern district of Louisiana:

F. B. CONRAD, assignee of Thomas Banks,
vs.
THOS. BANKS, E. W. WELLS AND WIFE, S. L. FORGAY, and W. ROBINSON, (f. m. c.,) et al. } In bankruptcy.

In chancery.

The defendants will please take notice, that interrogatories have this day been filed, on behalf of the complainant, in the office of the clerk of said court, intended to be exhibited to William Florance, in Philadelphia, and to Joseph A. Beard, John M. Bach, William Hoge, or any clerk of Robb & Hoge, in New Orleans, whose answers, when taken, the complainant will use in evidence in said case, and that the court will be moved for the proper commissions to take their depositions in answer to said interrogatories, ten days after service of this notice; within which time you will file such cross interrogatories as you may wish to propound.

LOCKETT & MICOU,
Solicitors for complainant.

CLERK'S OFFICE, *November 23d*, 1844

Marshal's return.

Rec'd, November 25th, 1844, and same day served a copy of the within on R. Hunt, esq., by leaving the same in his office in the hands of W. H. Hunt; and also a copy on M. M. Cohen, in person, in the city of New Orleans.

A. SIDNEY ROBERTSON,
U. S. Marshal.
By W. K. STYLES,
Dy U. S. Marshal.

And on the same day, to wit, the twenty-third day of November, A. D. 1844, the following interrogatories were filed:

In the circuit court of the United States, for the eastern district of Louisiana:

F. B. CONRAD, assignee of T. Banks,
vs.
T. BANKS, E. W. WELLS, S. L. FORGAY, and others. } In bankruptcy.

In chancery.

Interrogatories to be exhibited to Joseph A. Beard, Wm. Hoge, John M. Bach, and others, witnesses material to the plaintiff in said cause, said witnesses residing in New Orleans.

Interrogatories addressed to Joseph A. Beard.

Interrogatory 1st. Your attention is called to a sale made by William Florence to S. L. Forgay of a certain improved lot or square of ground in fauxbourg Livaudais, parish of Jefferson; the act of sale passed before A. Mazureau, notary public, on the 27th July, 1842. Were you employed as a broker to negotiate said sale on either side; and, if yea, by whom, and when were you so employed?

Interrogatory 2d. How long, before the date of the said act of sale, was the treaty for the same in progress?

Interrogatory 3d. Who called upon you in behalf of the purchasers? With whom were the terms arranged?

Interrogatory 4th. Had you offered the public sale; and, if yea, when, and who bid for the same?

Interrogatory 5th. Did you converse or negotiate with more than one person touching the sale to Forgay, and its terms? If so, name all the persons with whom you negotiated on the subject, and the order of time in which you spoke with them respectively.

Interrogatory 6th. Was any thing said, during the negotiation, of the person for whom, or the purpose for which, the property was wanted? If yea, what was said on that subject, and by whom?

Interrogatory 7th. What were your orders from Mr. Florance, touching the price of said property? What was the first offer made to you by S. L. Forgay, or in his behalf? How was the price offered to be paid? What negotiations took place as to the credit and mode of payment?

Interrogatory 8th. Who was first named as the intended purchaser of the property? Was any change made in the name of the purchaser? If yea, what was the change, and what reasons were given for making it? State all that occurred on this subject particularly, and at large.

Interrogatory 9th. You are requested to answer the above interrogatories, from the 3d to the 8th inclusive, with special reference to Thomas Banks and E. W. Wells, or any person representing them; and if

any person called or spoke to you in their behalf, then say who was the person so calling.

Interrogatory 10th. Did you ever speak or treat with S. L. Forgay, personally, respecting the above mentioned sale from Florance? If yea, when did you first speak with him on the subject? How often, and what was the purport of your conversations?

Interrogatory 11th. The act of sale states that notes of Patsey Shall, P. P. Rea, J. S. Pritchard, and Wm. H. Whitmarsh, were given in part payment of said property. Were said notes, or any of them, shewn to you, or offered to you before the sale, as part of the price? If yea, by whom were they so offered or shown? Where did you first see them? In whose possession, and how were they endorsed?

Interrogatory 12th. Were any other notes offered as part of the price; and, if so, by whom were they offered, and what notes were they?

Interrogatory 13th. Who occupied the premises after you sold them? Was possession given after or before the act of sale was signed?

Interrogatory 14th. Do you know anything of any improvements made upon the said premises after the sale from Florance? If yea, by whom were they made? *Was* was the cost or value of the improvements? Who paid for them?

Interrogatory 15th. If, in answer to the 13th interrogatory, you say that Wells or Banks, or their families, lived on the premises in question, then say how long they continued to reside there. Did you have any conversation with either Wells or Banks, or any one in their behalf, as to the reason of their leaving said property? If yea, what was the substance of the conversation, and with whom did it occur?

Interrogatory 16th. After the sale by Florance to Forgay, were you employed by any one to offer the said property again for sale? Was it when you were so employed? By whom were you requested to offer it?

Interrogatory 17th. Did you offer it at public or at private sale? How often did you offer it, and how long were you engaged in seeking a purchaser?

Interrogatory 18th. By whom were you first requested to sell it? Who spoke to you afterwards on the subject? Name all the persons with whom you conversed respecting it, and the order of time in which they spoke to you successively.

Interrogatory 19th. By whose instructions were you governed as to terms, &c., in offering said property for sale? Did you succeed in finding a purchaser? If yea, who was he?

Interrogatory 20th. Did you have a plan of the property prepared for exhibition? If yea, by whom was it made, and under whose instructions?

Interrogatory 21st. Did you have any conversation with T. Banks, E. W. Wells, or S. L. Forgay, as to the reason why the property was again offered for sale? If yea, then state particularly the substance of the conversations with each of them, and when it occurred?

Interrogatory 22d. Do you know, or can you set forth, any other mat-

ter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Interrogatories for John M. Back.

Interrogatory 1st. Where do you reside with your family? How near is your residence to the property in Livaudais formerly owned by William Florance? Are you well acquainted with the property?

Interrogatory 2d. Did any one converse with you about purchasing the property shortly before Florance sold it? If yea, who conversed with you on the subject, and what was said?

Interrogatory 3d. Who occupied the premises after the sale by Florance? How long did he or they continue to reside there? When did you first learn that Florance had sold the property? From whom did you learn it, and what was said on the subject?

Interrogatory 4th. Were any improvements made on the property after the sale by Florance? If yea, say particularly, as far as you can recollect, what improvements were made, and what you estimate to have been the costs of making them?

Interrogatory 5th. Who superintended the improvements? By what builder were they made? Who paid for them?

Interrogatory 6th. Did you have any conversation with any person about the improvements, or the plans, or the cost? If yea, with whom, and what was the substance of the conversation?

Interrogatory 7th. If you say, in answer to the above, that Wells and his family occupied the premises, then say how long they did so. Was any reason given to you for their removal? If yea, by whom was it given, and what was the reason?

Interrogatory 8th. Did you ever have any conversation with Wells, S. L. Forgay, or T. Banks, respecting the property, the improvements made on it, or the wish to dispose of it? If yea, with which of them did you so converse, and when? What was the purport of the conversation?

Interrogatory 9th. Do you know the house on Nayades street, now or lately occupied by E. W. Wells? Have you ever had any conversation with E. W. Wells, or Mrs. Wells, his wife, or with Thomas Banks, or Mrs. Banks, his wife, or with S. L. Forgay, respecting that house, either before it was built, while building, or after it was finished? If yea, then state particularly, and at large, with which of the persons above named you so conversed, and what was said by them respecting the property or house? Was any thing, and what, said of the plan of the house? Of its cost? Of the person for whom built? Of the person who should occupy it?

Interrogatory 10th. Do you know any thing of a square of ground in Livaudais, or of the two lots in said suburb, sold by T. Banks to George Allan, on or about the 1st June, 1842, by act before J. B. Marks, notary public? Have you ever heard Banks or Allan speak of that pro-

perty, or of the said sale? If yea, what did they or either of them say on the subject?

Interrogatory 11th. Are said lots in Livaudais improved? If yea, by whom occupied? By whom have they been occupied since June, 1842, and for what purpose?

Interrogatory 12th. Answer the concluding interrogatory addressed to Jos. A. Beard, and numbered 22d.

Interrogatories for William Hoge, or any clerk of Robb & Hoge.

Interrogatory 1st. Are you a member of the firm of Robb & Hoge, of New Orleans? Are you acquainted with their business?

Interrogatory 2d. Did said firm collect, or receive for collection, any notes or bills from Thomas Banks, or E. W. Wells, or S. L. Forgay, or George Allan, at any time between the 1st of January, 1842, and the 1st January, 1844? If yea, state particularly, and at large, all the notes so received; from which of said parties they were received; at what date; which of them were collected; and to whom the proceeds were paid. If, to answer this interrogatory, reference to your books is necessary, then refer to the same, and present to the commissioner to be annexed to your answers, and say in whose handwriting the original entries are made.

Interrogatory 3d. The commissioner will please read over to you all the foregoing interrogatories, addressed to Joseph A. Beard and John M. Bach. If you know any thing whatsoever touching the matters there inquired of, or if any conversations have occurred of similar tenor between yourself and the parties named therein, you will answer the said interrogatories successively, in the same manner as if they were specially addressed to yourself.

LOCKETT & MICOU,
WILDE & BENJAMIN,
Solicitors for complainants.

The defendants, represented by the undersigned solicitor, decline crossing the foregoing interrogatories, but reserve all legal exceptions thereto.

M. M. COHEN,
Solicitor for Banks, Allan, Whitla, & Robertson.

Dec. 4th, 1844.

And afterwards, to wit, on the nineteenth day of December, A. D. 1844, the following order was made and entered of record in this cause, to wit:

On motion of W. C. Micou, and on showing to the court that interrogatories for witnesses have been filed, and notified to the parties according to the rules of court; ordered, that commissions issue to take the depositions of said witnesses, one to W. J. Vason, esq., United States commissioner in New Orleans, and one to John M. Read, esq., or to any United States commissioner or commissioner of Louisiana, in Philadelphia.

And afterwards, to wit, on the same day, there issued from the said court the following commission, to wit:

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, to William J. Vason, esq., United States commissioner in New Orleans.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Joseph A. Beard, W. Hoge, John M. Bach, and other witnesses, and them duly examine, touching and concerning certain matters and things in a certain case now depending in the said court, wherein F. B. Conrad, assignee of T. Banks in bankruptcy, is plaintiff, and T. Banks, E. W. Wells, S. L. Forgay, and others, are defendants; and the same examinations, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause; and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [L. S.] nineteenth day of December, anno domini 1844, and the sixty-ninth year of the independence of the United States of America.

For DUNCAN N. HENNEN, *Clerk.*
J. Q. A. HOIT, *Deputy clerk.*

UNITED STATES OF AMERICA,
Eastern district of Louisiana, ss:

Be it remembered, that on this 20th day of January, in the year of our Lord one thousand eight hundred and forty-five, before me, William J. Vason, a commissioner duly appointed on the 7th April, 1842, by the circuit court of the United States in and for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and an act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Joseph A. Beard, John M. Bach, and William Hoge, persons of sound mind and lawful age, witnesses for the plaintiff in civil suit now depending in the circuit court of the United States, in and for the fifth judicial circuit in the eastern district of Louisiana, wherein F. B. Conrad, assignee of Thomas Banks in bankruptcy, is plaintiff, and Thomas Banks, E. W. Wells, S. L. Forgay, and others, are defendants; and the said Joseph A. Beard being by me first carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, did depose and say, to wit:

Joseph A. Beard being duly sworn, did depose and says, as follows:

To the 1st interrogatory he answers, that he was employed by William Florance to sell the square of land referred to in this interrogatory, a month or two before the sale thereof.

To the second interrogatory he answers, that he frequently spoke with Mr. Thomas Banks before the sale, perhaps two months before the sale.

To the 3rd interrogatory he answers, that Mr. Thomas Banks was the only person he recollects with whom the terms of the sale were arranged, he being the only person who spoke to him about the purchase. After Mr. Banks had agreed with the witness to purchase the property, witness referred him to Mr. William Florance, the vendor, to arrange and complete the terms of the sale.

To the 4th interrogatory he answers, that the said square of ground has been offered for sale once or twice, and several persons bid for it; but he does not recollect their names, as the sale thereof at public sale was not effected.

To the 5th interrogatory he answers, that he only spoke to two persons about the sale of said property; they were Mr. Thomas Banks and E. W. Wells; and that Mr. Banks first spoke to him about purchasing the said square of land.

To the 6th interrogatory he answers, that Mr. Wells told witness that he wanted said square of ground for a residence for his family.

To the 7th interrogatory he answers, that he was instructed by Mr. William Florance to sell said square of ground for $12 or $12,500, which sum he does not recollect. The first offer made by the parties was eleven thousand dollars; the price offered was to be paid part cash, the balance on a credit.

The last clause of this interrogatory witness cannot answer, as witness referred Mr. Thomas Banks to Mr. Wm. Florance to settle the terms of the sale, as above stated.

To the 8th interrogatory he answers, he knew of no other person, nor spoke to any other, about the purchase of said property, but Mr. Thomas Banks and E. W. Wells, to the best of his recollection. He did not know, until after the title had been passed, that Mr. Forgay was the purchaser; he does not recollect whether he ever heard any reasons assigned by the parties for having the title made to Mr. Forgay.

To the 9th interrogatory he answers, that he does not recollect whether any other person spoke to him about the purchase of said property but Mr. Thomas Banks and E. W. Wells.

To the 10th interrogatory he answers, that he has no recollection of ever having spoken to Mr. Forgay about the purchase of said property; nor does he think or recollect that Forgay ever spoke to witness about the purchase.

To the 11th interrogatory he answers, that none of the notes described in this interrogatory were ever offered to, nor shewn to him before the sale. Witness has no recollection of ever having seen said notes at any time.

To the 12th interrogatory, he answers this as he has answered the eleventh interrogatory. He never saw any notes, and consequently knows nothing about any offered in part payment by the purchasers of said property.

To the 13th interrogatory he answers, that Mr. Banks' and Mr. Wells' family occupied the premises ; possession thereof was given before the sale was completed.

To the 14th interrogatory he answers, that improvements were made upon the premises, after the sale from Florance, to the value of about three thousand dollars, under the superintendence of Mr. Banks. Witness does not know who paid for said improvements.

To the 15th interrogatory he answers, that he had conversations with Mr. Banks shortly after he removed to the property purchased, and that Mr. Banks said he could not get his wife to live on the premises; and afterwards, Mr. Wells, who said that it was inconvenient for him to live on the premises, as the distance was too great from his business.

To the 16th interrogatory he answers, that after the sale of the property by Florance to Forgay, witness was spoken to by Mr. Banks about reselling it, but that he did not effect a sale thereof. It was several months after the purchase from Florance, he was spoken to by Mr. Banks.

To the 17th interrogatory he answers, that he never offered the said property for sale at either public or private sale. Witness never sought a purchaser for the property.

To the 18th interrogatory he says, that he has no other answer to make to this interrogatory than is to be found in his answer to the 17th interrogatory.

To the 19th interrogatory he says, that he answers this interrogatory as he answered the 18th interrogatory.

To the 20th interrogatory he answers, that he did not cause or have a plan of said property made, or prepared for exhibition; but believes that a plan was drawn, but by whom he has no recollection.

To the 21st interrogatory he refers to the answer to the 15th interrogatory, as his answer to this interrogatory.

To the 22d interrogatory he states, that he knows nothing more than what is contained in his answers to the foregoing interrogatories, which will be of advantage to the plaintiff or defendants.

J. A. BEARD.

Answered, sworn to, and subscribed before me, this 20th day of January, 1845.

WM. J. VASON,
United States Commissioner for eastern district of Louisiana.

And thereupon came John M. Bach, who being duly sworn, did depose and say, as follows:

To the 1st interrogatory he answers, that he resides with his family in fauxbourg Bouligny, in the parish of Jefferson, in this State ; that his residence is about three quarters of a mile from the property formerly

owned by Wm. Florance, and that he is well acquainted with said property referred to in this interrogatory.

To the 2d interrogatory he answers, that he does not recollect that any person conversed with him about purchasing said property, shortly before Florance sold it.

To the 3d interrogatory he answers, that Thomas Banks and E. W. Wells occupied said property after the sale thereof by Florance with their families, and that they continued to occupy the same a few months, say five or six months. Witness was first informed of the sale of said property about the time of the sale, and thinks that either William Florance, or one of his brothers, first informed him that the property was sold.

To the 4th interrogatory he answers, that there were improvements made on the property shortly after the sale thereof from Florance; there were two wings made to the dwelling-house thereon, and that he estimates the costs of the improvements to be about three thousand dollars.

To the 5th interrogatory he answers, that he does not know who superintended the improvements; does not know by what builder they were made, nor who paid for the improvements.

To the 6th interrogatory he answers, he says that he does not recollect having any conversations with any person about the said improvements, or the plans or the costs.

To the 7th interrogatory he answers, that he has already answered the first part of this interrogatory in his answer to the third interrogatory. Mr. Wells told witness that the reason of his removal from the premises was, that it was too far from his place of business, viz., the gas office.

To the 8th interrogatory he answers, that he never had any conversation with E. W. Wells, S. L. Forgay, or T. Banks, respecting the matters inquired of in this interrogatory, and that he has no further answer to make to the same than as above stated.

To the 9th interrogatory he answers, that he knows the house situate on Nayades street referred to in this interrogatory, but that he never had any conversation with either of the persons named in this interrogatory about the matter therein inquired of, and that he has no further answer to make to the same.

To the 10th interrogatory he answers, that he knows nothing about the matters inquired of in this interrogatory, and consequently has no other answer to make to the same.

To the 11th interrogatory he answers, that he knows nothing about the two lots in Livaudais, referred to in this interrogatory, and consequently has no other answer to make to the several matters therein inquired of.

To the 12th interrogatory he says, that he knows of nothing more which in his judgment will be of importance to either of the parties to said suit; and further deponent sayeth not.

JOHN M. BACH.

Answered, sworn to, and subscribed before me, on this 21st day of January, 1845.

WM. JO. VASON,
U. S. commissioner, district of Louisiana.

And now at this time comes William Hoge, who being duly sworn as aforesaid, did depose and answer as follows, to wit:

To the 1st interrogatory he answers, that he is a member of the firm of Robb & Hoge, of New Orleans, and that he is well acquainted with their business.

To the 2d interrogatory he answers, that the firm of Robb & Hoge received from E. W. Wells, between the 1st January, 1842, and 1st January, 1844, a number of notes for collection; the amounts, by whom drawn, are specially set forth and described in the annexed copy of list of notes received for collection for account of E. W. Wells, marked A, the original of which is now in the possession of the said Robb & Hoge, for the greater portion of said notes.

The annexed account current taken from the books of said Robb & Hoge, marked B, shews which of said notes received from E. W. Wells were paid, and when paid; and said account current shews that the amount of money collected from said notes was paid to the said E. W. Wells on his own checks, and the notes which were not paid at maturity were protested and returned to the said E. W. Wells.

Affiant now presents to the undersigned commissioner a copy of the list of said notes, marked A, and also an account current taken from the books of Robb & Hoge, marked B, as part of his answer to said interrogatory.

The original entries of said account current were made by the book-keeper of said Robb & Hoge, the original list of said notes in the handwriting of said book-keeper.

To the 3d interrogatory he answers, that he has read over all the interrogatories addressed to J. A. Beard and J. M. Bach, and that he knows nothing of the matters therein enquired of; and further this deponent sayeth not.

WILLIAM HOGE.

Answered, sworn to, and subscribed before me, on this 16th day of April, 1845.

WM. J. VASON,
U. S. commissioner circuit and district court, Eastern district of Louisiana.

A.

List of notes received for collection for account of E. W. Wells.

1842. August	20	M. Crooks	$130 00
		Mitchell & Phillips	600 00
		Thomas Warren	40 00
		John Barton	50 00
		J. Herischein	66 66
		Samuel Jobson	83 33
		Lemuel J. Brown	83 33
		H. Hamberger	30 00
		John Harvey & Co.	60 00
		Robert & Liggen	45 00
		Whitsell & Roper	50 00
		Charles Collingham	40 00
		Th. Geiger	40 00
		F. Kistner	30 00
		Ed. Haber	30 00
		N. Crumbhorn	60 00
		J. Brown	30 00
		Asa Allan	220 00
		Williams & Grant	150 00
		Isaiah W. Kelly	250 00
		X. Lambert	280 00
		M. Kling	290 00
		Do.	120 00
		G. Thirsen	150 00
		E. Tastet	100 00
		Bridges S. Fenney	812 50
"	September 15	John Barton	50 00
		Mitchell & Phillipps	600 00
		Charles Collingham	40 00
		Sam'l Jobson	83 33
		John Harvey & Co.	60 00
		Lemuel S. Brown	83 33
		Roberts & Liggen	45 00
		Thomas Warren	40 00
		N. Crumhorn	60 00
		Dubois & Richardson	100 00
		Williams & Grant	150 00
		G. Themer	150 00
		Mickins & Kelchain	250 00
		E. Tastet	100 00
		Carried over,	$5,652 48

List of notes, &c.—Continued.

	Brought forward,	$5,652 48
1842. September 15	A. W. Hainy	250 00
	Whitsell & Roper	50 00
	O. Geiger	40 00
	J. Drown	30 00
	H. Hamburger	30 00
	Geinrich Wohlfarht	50 00
	J. Hernschein	66 66
	John S. Pritchard	120 00
	John Hewlett	2,000 00
	E. Herber	30 00
	Meakings & Ketcham	375 00
	Charles Collingham	40 00
	David White	120 00
	Taylor & Hadden	225 00
	Whitsell & Roper	50 00
	Henry Hamburger	30 00
	J. Drown	30 00
	Sam'l Jobson, jr.	83 33
	F. Kistner	30 00
	Wm. Dunbar	120 00
	Thomas Warran	40 00
	N. Crumhorn	60 00
	Roberts & Leggon	45 00
	M. D. Cooper & Co.	120 00
	J. Hemschene	66 66
	M. Crooks	130 00
	Lemuel L. Brown	83 33
	Th. Geiger	40 00
	John Havey	60 00
	John Barton	50 00
	E. M. Henry	160 00
	X. Lambert	280 00
	M. Kling	120 00
	Do.	290 00
	Josiah W. Killey	250 00
	Mitchell & Phillipps	600 00
	J. P. Evans	500 00
	Mans, Phelan & Co.	275 00
	Henry Hacy	150 00
	H. Landon	200 00
	Am't carried over,	$12,942 46

List of notes, &c.—Continued.

	Am't brought forward,	$12,942 46
1842. September 15	J. R. Borgsted & Co. - -	325 00
	H. English - - -	325 00
	Norman, Steele & Co. - -	450 00
	H. Campbell - - -	250 00
	Poole & Co. - - -	250 00
	Asa Allen - - -	220 00
	Robert Clannon - -	300 00
	Williams & Grant - -	150 00
	A. Kutzman - - -	125 00
	E. Paster - - -	100 00
	H. Suffert - - -	200 00
	W. H. Whitlock - -	450 00
	E. Huber - - -	30 00
		$16,117 46
	In addition to foregoing the following notes have been received for collection on same account, and paid:	
1842. January 21	Jno. Stewart - - -	750 00
" February 21	Do. - - -	750 00
" March 4	T. Sloo, acceptance - -	666 66
" April 8	J. Stewart - - -	485 00
" May 5	Do. - - -	485 00
1843. August 22	O. F. Smith - - -	150 00
" November 4	Do. - - -	150 00

E. & O. E. ROBB & HOGE.

DR. *E. W. Wells, esq., in account*

1842.			
Sept.	5	To paid D. L. McCay, notary public:	
October	3	6 protests, *a* 2, $12, 3 do. *a* 2 50, $7 50 - - -	$19 50
"	3	5 do. *a* 2, $10, 2 do. *a* 2 50, $5 00 - - -	15 00
	6	protest for G. Thriver, note - - - - -	2 50
Nov.	2	8 protests, *a* 2, $16, 1 protest, *a* $2 50 - - -	18 50
	4	2 do. *a* 2, $4, 1 do. *a* $2 50 - - -	6 50
		13 p. c. discount on $5,832 06, municipality and uncurrent money - - - - - - -	758 23

current with Robb & Hoge, CR.

1842.	Paid in.	Municipality.	Bank notes.	Specie.	
Sept. 1	By X. Lambert's note - -	$280 00	–	–	$280 00
	" M. Kling - - -	120 00	–	–	120 00
	" Williams & Grant - -	150 00	–	–	150 00
	" M. Crooks - - -	90 00	$40	–	130 00
	" N. Crumhorn - - -	60 00	–	–	60 00
	" J. Harvey & Co. - -	60 00	–	–	60 00
	" Whitsette & Roper - -	50 00	–	–	50 00
	" E. Tastet - - -	100 00	–	–	100 00
	" J. Drown - - -	30 00	–	–	30 00
	" Roberts & Liggens - -	45 00	–	–	45 00
	" F. Kistner - - -	30 00	–	–	30 00
	" M. Kling - - -	260 00	30	–	290 00
	" E. Huber - - -	30 00	–	–	30 00
	" Tho. Geiger - - -	40 00	–	–	40 00
2	" John Barton - $50 00				
	Protest fee 2 50				
		52 50	–	–	52 50
3	" A. Allen - - - -	–	–	$220 00	220 00
15	" rec'd on account B. J. Fenny -	295 00	–	–	295 00
28	" Thos. Geiger, due 1-4 October -	40 00	–	–	40 00
30	" Samuel Jobson - - -	–	15	68 33	83 33
Oct. 1	" John Harvey & Co. - -	60 00	–	–	60 00
	" J. Drown - - -	30 00	–	–	30 00
	" J. L. Pritchard - - -	120 00	–	–	120 00
	" Williams & Grant - -	150 00	–	–	150 00
	" Micking & Ketchum - -	250 00	–	–	250 00
	" Whitsette & Roper - -	50 00	–	–	50 00
	" A. Kurfsman - - -	125 00	–	–	125 00
	" Tho. Warran, Sept. & Oct., $40	80 00	–	–	80 00
3	" J. Hernshein - - -	51 66	15	–	66 66
	" Roberts & Liggen - -	45 00	–	–	45 00
	" N. Crumhorn - - -	60 00	–	–	60 00
	" Jas. Barton - - -	–	50	–	50 00
	" A. W. Haines, $250, ½ protest, 1	10 00	100	141 00	251 00
6	" rec'd further on acc't B. J. Finney	105 00	–	–	105 00
27	" Herrick Wohlfurth - -	43 00	–	7 00	50 00
28	" rec'd on ac't Hewlett's note $500				
	4 mo's interest, *a* 8 p. c. 41				
		–	–	541 00	541 00
29	" X. Lambert's note, 1 Nov. -	280 00	–	–	280 00
31	" M. Kling - - -	120 00	–	–	120 00
	" do. - - - -	290 00	–	–	290 00
	" Whitsett & Roper - -	50 00	–	–	50 00
	" L. Kistner - - -	30 00	–	–	30 00
Nov. 1	" Philip Geiger - - -	40 00	–	–	40 00
	" Williams & Grant - -	150 00	–	–	150 00
	" Poole & Co. - - -	250 00	–	–	250 00
	" F. Campbell - - -	250 00	–	–	250 00
	" Roberts and Liggins - -	45 00	–	–	45 00
	" N. Crumhorn - - -	60 00	–	–	60 00
	" J. Drown - - -	30 00	–	–	30 00
	" David White - - -	120 00	–	–	120 00
	" H. Suffut - - -	200 00	–	–	200 00
	" Norman, Steele & Co. - -	450 00	–	–	450 00
	" Ewd. Huber - - -	30 00	–	–	30 00
	" Taylor & Hadden - -	–	–	225 00	225 00
	" M. D. Cooper & Co. - -	–	–	120 00	120 00

DR. *E. W. Wells in account*

1842.			
Nov.	22	To sundry expenses - - - - - -	$17 25
		" checks of various dates, for this amount - - -	10,972 53
			$11,809 99

E. and O. excepted.

with Robb & Hoge—Continued. CR.

1842.	Paid in.	Municipality.	Bank notes.	Specie.	
Nov. 2	By John Harvey & Co. - -	$60 00	–	–	$60 00
	" John Barton - - -	50 00	–	–	50 00
	" J. K. Borgstead & Co. - -	325 00	–	–	325 00
	" S. P. Evans - - -	500 00	–	–	500 00
	" Mickings & Ketchum - -	375 00	–	–	375 00
	" Asa Allen - - -	20 00	–	$200 00	220 00
8	" E. M. Henry, on account, $160	80 00	–	–	80 00
	" R. Clannon, on account, $300 -	150 00	–	–	150 00
16	" Bridget J. Finney, note $812 50 and protest, balance - -	414 50	–	–	414 50
	" Wm. H. Whitlock - -	450 00	–	–	450 00
	" E. Landon - - -	200 00	–	–	200 00
22	" H. Finney's note - -	–	–	325 00	325 00
Dec. 1	" R. Clannon, balance and interest	151 00	–	–	151 00
21	" M. Henry's note - -	80 00	–	–	80 00
1843.					
Mar. 3	" balance J. Henry's note, $1,500 And interest - - 50	–	–	1,550 00	1,550 00
	E. & O. excepted.	$8,162 66	$250	3,397 33	$11,809 99

NEW ORLEANS, 1*st April*, 1845.

ROBB & HOGE.

UNITED STATES OF AMERICA,
Fifth circuit and eastern district of Louisiana, ss:
City of New Orleans.

I, William Jo. Vason, a commisioner, duly appointed, on the 7th April, 1842, by the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the acts of Congress, entitled "an act in addition to an act entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "an act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, the undersigned commissioner is directed and authorized by the annexed commission, issued from said court, to take the depositions of said witnesses to interrogatories annexed to said commission.

I further certify, that no notice was made out and served on the defendants or adverse parties, agents, or attorneys, to be present at the taking of the deposition, and to put interrogatories if he or they may think fit; and that no notice of the time and place of taking the said depositions was made out and served on said defendants or adverse parties, because the said adverse parties were served with said interrogatories, and declined putting any cross interrogatories, as appears from the said defendants' solicitors' refusal, to said interrogatories.

I further certify, that on this 20th and 21st day of January, and 16th day of April, A. D. 1845, I was attended by the witnesses, who are of sound mind and lawful age, and as witnesses, by me carefully examined, and cautioned, and sworn to testify the whole truth; and their depositions were by me carefully reduced to writing in the presence of the witnesses, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing the same with my own hand, and forwarding to the court for which the same were taken.

I further certify, that I am not of counsel or attorney to either of the parties to the said suit in said depositions and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

WM. JO. VASON,
U. S. commissioner, circuit and district court United States, for the eastern district of Louisiana.

And afterwards, to wit, on the 12th day of May, A. D. 1845, the following notice was made out and served by complainant's solicitors upon the solicitors of defendants, to wit:

F. B. CONRAD, assee., }
vs. } In chancery.
THOMAS BANKS, et al. }

Circuit court United States, to the defendants or their solicitors.

Take notice, that upon the call of the said case upon the equity docket, a motion will be made that the property admitted by the answer of George Allan to have been conveyed to him by the bankrupt, Thomas Banks, without consideration, as well as all other property admitted by the answers of any other of the defendants to have been to them severally and respectively so conveyed by the said bankrupt, in prejudice of his creditors, shall be ordered, adjudged, and decreed, to be delivered up to the assignee of the said bankrupt, to be by him distributed according to law. And that, as to the residue of the property in dispute, a receiver be appointed.

(Signed) R. W. WILDE, *compl'ts sol.*

May 12, 1846.

And afterwards, to wit, on the 13th May, 1845, the following return was made on said notice, to wit, "copy of within served on M. M. Cohen personally, and also copies left at the offices of L. Pierce, esq., and Randall Hunt, esq.

(Signed) W. C. MICOU.

New Orleans, May 13, 1845.

And afterwards, to wit, on the 14th day of May, 1846, the following interlocutory order was rendered by said court upon said notice, to wit:

Upon hearing the bill, answers, and exhibits, and fully considering the same, on motion of R. H. Wilde, esq., of counsel for the complainant, M. M. Cohen, counsel for the defendant, George Allan, being in court, and stating he had nothing to offer to the contrary, and no counsel appearing for William Whitla, it is ordered, adjudged, and decreed by the court, that the lots of land referred to in said bill and answer, as having been conveyed to the said George Allan, and fully and particularly described in exhibit J, of the said complainant's bill, as follows: two certain lots of ground, together with all the improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in suburb Delord, parish of Orleans, and forming part of a tract of land purchased by the New Orleans Canal & Banking company, from Mrs. Louisa Delord Sarpy, wife of Dominique François Burthe, per act passed before G. R. Stringer, notary public, the 25th May, 1831, and designated by the numbers 329 and 330, on a plan drawn by R. Delafield, captain of engineers, for said company, dated in March, 1832, and deposited in the office of Stringer, (now that of Felix Grima, notary,) said lots adjoin each other, and together eighty-five feet on Covington landing, 27 feet on Pensacola landing, by a depth of one hundred and ninety-six feet, and about fifty feet width on the rear, being the same property which the said William Whitla acquired from Thomas Banks, by an act passed before Joseph

B. Marks, notary, on the 24th day of May, 1842; which said lots and premises were formerly the property of the said Thomas Banks, and by the answers of the said George Allan and William Whitla are confessed and admitted to have been conveyed to him by simulated sales without any valuable consideration whatever, be delivered up to said Francis B. Conrad, assignee of said bankrupt, as part of said bankrupt estate, to be disposed of and distributed according to law. That the said simulated sale be, and the same is hereby, cancelled and declared to be void and of none effect; and the said lots of land and premises declared, decreed, and adjudged to be part of said bankrupt's, Thomas Banks, estate, and as such, vested in his said assignee, as fully and completely as if all title to the same had legally, as well as equitably, in the said Thomas Banks, at the time of his bankruptcy, and the said lots of land and premises had been placed upon his schedule and possessed by his assignee. And the residue of said complainant's bill, and every matter and thing therein set forth, is retained and reserved until further and final decree.

And afterwards, to wit, on the 15th day of May, 1845, the following order, appointing a receiver in this cause, was rendered by said court, to wit:

On motion of R. H. Wilde, complainant's solicitor, and no one appearing for defendants to gainsay the same: It is ordered, that W. H. Holt be appointed a receiver of the rents and profits of the two-story brick house and lot, situate at the corner of Nayades and Calliope streets, and of the hire or wages of three negro slaves in the said bill and answer more particularly described, now in the possession of said Edmond W. Wells, and Ann his wife, with full force and authority to take the said property into his possession, and to rent and hire out the same. He, the said W. H. Holt, giving bond and security in the sum of five thousand dollars to the satisfaction of his honor, the district judge, and accounting with this court as often as may be required; said receiver to be allowed a reasonable reward for his care and labor.

Testimony.

And afterwards, to wit, on the 28th day of June, A. D. 1845, the following order was entered of record in this cause, upon motion of the complainant:

On motion of Benjamin and Micou, it is ordered that a commission do issue in this case, directed to William Rawle, esq., Philadelphia, or any United States commissioner, to take the testimony of William Florance, esquire, under interrogatories heretofore filed.

And afterwards, to wit, on said 28th day of June, A. D. 1845, there issued from said court the following commission:

Circuit court of the United States, for the eastern judicial circuit, holding sessions in and for the district of Louisiana, to William Rawle, esquire, Philadelphia, or any United States commission, to take the testimony of William Florance, esq.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, William Florance, esquire, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein F. B. Conrad, assignee of T. Banks, in bankruptcy, is plaintiff, and T. Banks, E. W. Wells, S. L. Forgay, and others, are defendants; and the same examinations, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this twenty-eighth day of June, anno domini 1845, and the sixty-ninth year of the independence of the United States of America.

[SEAL.] For DUNCAN N. HENNEN, *Clerk*.
F. McCULLOCH, *Dy. Clerk*.

Notice and interrogatories.

Circuit court of the United States, for the eastern district of Louisiana.

F. B. CONRAD, assignee of Thomas Banks,
vs.
THOMAS BANKS, E. W. Wells, and wife, S. L. Forgay, George Allan, William Whitla, and W. Robertson, f. m. c. } In Bankruptcy.

In Chancery.

The defendants will please take notice, that interrogatories have this day been filed, on behalf of the complainant, in the office of the clerk of said court, intended to be exhibited to William Florance, in Philadelphia, and to Joseph A. Beard, John M. Bach, William Hoge, or any clerk of Robb and Hoge, in New Orleans, whose answers when taken the complainant will use in evidence in said cause, and that the court will be moved for the proper commissions to take their depositions in answer to said interrogatories ten days after service of this notice, within which time you will file such cross interrogatories as you may wish to propound.

LOCKETT & MICOU,
Solicitors for complainant.

Clerk's office, November 23d, 1844.

"*Marshal's return.*"

Received, November 25th, 1844, and same day served a copy of the within on R. Hunt, esq., by leaving the same at his office in the hands of W. H. Hunt, esq.; and also a copy on M. M. Cohen, esq., in person, in the city of New Orleans.

A. S. ROBERTSON,
U. S. Marshal.
By W. K. STYLES,
Deputy U. S. Marshal.

"*Interrogatories.*"

In the circuit court of the United States, for the eastern district of Louisiana.

F. B. CONRAD, assignee of Thomas Banks,
vs.
T. BANKS, E. W. WELLS, S. L. FORGAY, and others. } In bankruptcy.

Bill for discovery, relief, &c.—"*In chancery.*"

Interrogatories to be exhibited to William Florance, a material witness for the complainant, and residing in the city of Philadelphia, Penn.

Interrogatory 1st. Your attention is called to an act of sale passed in New Orleans, on the 27th July, 1842, before A. Mazureau, notary public, by which William Florance sold to S. L. Forgay a certain improved lot or square of ground in fauxbourg Livaudais, parish of Jefferson. Are you the person named as the vendor in said act?

Interrogatory 2d. Did you negotiate for said sale in person, or through a broker? If the latter, who was the broker employed?

Interrogatory 3d. How long before the date of the act was the treaty for the sale in progress?

Interrogatory 4th. Who called upon you in reference to the proposed purchase? With whom were the terms of sale arranged?

Interrogatory 5th. Did you converse with more than one person touching said sale and its terms? If so, state all the persons with whom you so conversed or negotiated, and the order of time in which you saw them respectively.

Interrogatory 6th. Was any thing said respecting the person for whom, or the purpose for which, the property was wanted? If yea, what was said on the subject, and by whom?

Interrogatory 7th. What was the price at which you held the property? How much was the first offer, made to you by Mr. Forgay, or on his behalf; and how to be paid? What negotiations took place respecting the mode of payment and the term of credit?

Interrogatory 8th. Did any conversation occur touching the name of the person to whom the property was to be conveyed to, who was first named as the purchaser? Did any change occur in the name; and what was the reason given for making it? State all that occurred on this subject particularly and at large.

Interrogatory 9th. You are requested to answer the above interrogations, from the 4th to the 8th inclusive, with special reference to Thomas Banks and E. W. Wells, or any person representing them; and, if any person called in their behalf, then say who was the person so calling.

Interrogatory 10th. Did you meet S. L. Forgay in the notaries' office when you signed the act? Had you ever spoken, or treated with him personally, touching the sale, before so meeting him in the office? If yea, then say *whom* you first spoke with him on the subject; how often

you spoke with him, and what was the purport of your conversation.

Interrogatory 11th. It appears, by said act of sale, that you received, in part payment for the said property, notes of Mrs. Shall and others, as shown in list annexed, payable to Thomas Banks, or order. Who first proposed to give said notes in part payment? When did you first see them; and in whose possession were they when you first saw them? How were they then endorsed?

Interrogatory 12th. Were any other notes offered to you in part payment; and, if so, what notes, and by whom offered?

Interrogatory 13th. It appears, by said act of sale, that the balance of the price was paid in notes of S. L. Forgay. When, and by whom, was his name proposed to you as maker of said notes?

Interrogatory 14th. Were all of said notes of S. L. Forgay paid at maturity, or after? Were any of them renewed; and, if renewed, by whom, and at whose request?

Interrogatory 15th. Who occupied the premises after you sold them? Was possession given after or before the act of sale was signed?

Interrogatory 16th. Did you have any conversation with said Banks, Wells, or Forgay, or any one, on their behalf, after the sale, respecting the property, its sale, the price, or its payment; or touching any improvements made upon it? If yea, what was the purport of such conversation or conversations, and when and with whom did they occur?

Interrogatory 17th. Did you know any other fact, in addition to what you have already stated, conducing to prove that Samuel L. Forgay became the purchaser of the said property for the use, benefit, or accommodation of some other person than himself? If yea, state the same, as if specially interrogated, whether such proof may consist of the acts or declarations of the parties concerned; and say when and where the same occurred.

Signed, WILD, BENJAMIN & MICOU,
For complainants.

Extract from the act of sale referred to in the foregoing interrogatories here annexed, that the witness may refer to the same if necessary.

Description of the property sold.

"A certain square of ground, (No. twenty-six,) situated in fauxbourg Livaudais, parish of Jefferson, between Eighth, Ninth, Chippewa, and Jersey streets, measuring 360 feet front on Eighth, 360 feet front on Ninth street, 250 feet front on Chippewa, and 250 feet front on Jersey streets, in English measure, together with all the buildings, improvements, &c.

Memo. of notes received for the price.

1. Note of P. P. Rea, date 1st November, 1841, endorsed T. Banks, E. W. Wells and S. L. Forgay, payable 12 mo's after date, for - - - - - - $883 33
2. Note of J. S. Pritchard, date 27th Sept., 1841, with same endorsers, payable 1st October, 1842, for - - 683 33

3. Note of Patsey Shall, date 17th Sep., 1838, with the same endorsers, payable on the 1st November, 1842, for 3,125 00
4. Note of W. H. Whitmarsh, of date 17th May, 1842, to order, and endorsed by N. D. Chamberlain; also endorsed by T. Banks, E. W. Wells, and S. L. Forgay, payable 1st November, 1841, for - - - 400 00
5. Three notes of S. L. Forgay, endorsed by E. W. Wells and Thomas Banks, payable at 6, 12, and 18 months from 1st November, 1842, with interest, each note for $2,652 78, - - - - - - 7,958 34

The defendants represented by the undersigned solicitor in the above entitled bill for discovery and relief, decline crossing the foregoing interrogatories, and reserve all exceptions thereto, and particularly to the 17th interrogatories; for this, that the same is not such as is prescribed for the last interrogatory, in written interrogatories, to take testimony by rule LXXI of the rules of practice for the courts of equity of the United States, promulgated by the Supreme Court of the United States, January term, 1842.

Signed, M. M. COHEN,
Solicitor for Banks, Robinson, Whitla and Allan.

Additional interrogatory on behalf of the complainant.

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Signed, WILDE, BENJAMIN & LOKETT,
and MICOU, *Solicitors for complainants.*

Clerk's office, circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

I hereby certify the foregoing to be a true copy of the original on file in this office.

[SEAL.] In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, this 19th day of December, 1844.

For DUNCAN N. HENNEN, *Clerk.*
J. Q. A. HOIT, *Deputy clerk.*

Deposition of William Florence, a witness produced, sworn, and examined, by virtue of the annexed commission, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-five, at the office of William Rawles, No. 131, Walnut street, in the city of Philadelphia, and State of Pennsylvania, before me, the said William Rawle, the commissioner named in the annexed commission, and also the commissioner for the State of Louisiana, to take testimony in the State of Pennsylvania, in a certain case now depending in the circuit court of the United States for the fifth judicial circuit, holding

sessions in and for the district of Louisiana, wherein F. B. Conrad, assignee of T. Banks, in bankruptcy, is plaintiff, and T. Banks, E. W. Wells, S. L. Forgay, and others, are defendants, on the part of the complainant.

William Florance, late of the city of New Orleans, now of the city of Philadelphia, gentleman, aged forty years and upwards, being produced and sworn, answers as follows to the interrogatories propounded to him in this cause:

To the first interrogatory on the part of the plaintiff, he answers as follows, viz: My attention being called to an act of sale passed in New Orleans, on the 27th of July, 1842, before A. Mazureau, not. public, by which William Florance sold to Samuel L. Forgay a certain improved lot or square in faubourg Livaudais, parish of Jefferson, I declare that I am the person named as the vendor in said act.

To the second interrogatory on the part of the plaintiff he answers as follows, viz: I negotiated for said sale in person, and not through a broker.

To the third interrogatory on the part of the plaintiff he answers as follows, viz: I do not recollect precisely how long before the date of the act the treaty for the sale was in progress; but, according to the best of my recollection, the sale was agreed upon on the same day that the application was made to me; and the act of sale was made and dated as soon as some difficulties about the title could be arranged, and the necessary papers prepared, which I think occupied about a week.

To the fourth interrogatory on the part of the plaintiff he answers as follows, viz: E. W. Wells called upon me in reference to the proposed purchase; the terms of sale were arranged with him.

To the fifth interrogatory he answers as follows, viz: I conversed with no other person than the said E. W. Wells, touching the said sale and its terms.

To the sixth interrogatory on the part of the plaintiff he answers as follows, viz: Nothing was said respecting the person for whom, or the purpose for which, the property was wanted, except that the said E. W. Wells stated that he was authorized to buy it for S. L. Forgay.

To the seventh interrogatory on the part of the plaintiff he answers as follows, viz: According to the best of my recollection, the price at which I held the property was thirteen thousand dollars cash. No offer was made to me by Mr. Forgay, or on his behalf; the property was in the market, and the price known. I may have been asked by Mr. Wells if the price named was the lowest I would take, but I do not recollect; according to the best of my recollecton, I was paid in promissory notes, made equal to cash, and bearing mortgage on the property. The negotiation which took place respecting the mode of payment, and terms of credit, was this: Mr. Wells stated to me that he had certain short notes which he would hand over on the part of Mr. Forgay, and which I could make bear mortgage on the property; and that for the balance, he would give me the notes of Forgay at six, twelve, and eighteen months, from the first of November, 1842, endorsed by Banks

and Wells, and bearing a mortgage on the property. These terms I accepted.

To the eighth interrogatory he answers as follows, viz: No conversation occurred, touching the name of the person to whom the property was to be conveyed, except, as I have already stated, that Mr. Wells said that Mr. Forgay was the purchaser. He was the first and only person named as the purchaser.

To the ninth interrogatory on the part of the plaintiff he answers as follows, viz: I have already stated all I know of the matters inquired of in the interrogatories on the part of the plaintiff, from the 4th to the 8th inclusive. I am unable to give any further answer.

To the tenth interrogatory on the part of the plaintiff he answers as follows, viz: I did not meet S. L. Forgay in the notary's office when I signed the act. I never spoke or treated with him at any time personally, touching the said sale, except that after the sale had been agreed upon, as already stated, I may have met him in the street, and stated that the papers were nearly ready; but I have no particular recollection on the subject.

To the eleventh interrogatory on the part of the plaintiff he answers as follows, viz: The notes of Mrs. Shall and others are the short notes to which I referred in my answer to the seventh interrogatory, as I have already stated. E. W. Wells first proposed to me to give such notes in part payment. I think I saw them first in the notary's office when I was about to sign the act of sale, and in the notary's possession. They were then endorsed by Banks, Wells, and Forgay.

To the twelfth interrogatory, on the part of the plaintiff, he answers as follows, viz: There were no other notes offered to me in part payment, except those mentioned in the act of sale, an extract from which is annexed to these interrogatories.

To the thirteenth interrogatory, on the part of the plaintiff, he answers as follows, viz: As I have already stated in my answer to the seventh interrogatory, the notes of S. L. Forgay were offered to me for the balance of the price, by E. W. Wells, when he applied to me to purchase the property.

To the fourteenth interrogatory he answers as follows, viz: In consequence of my having gone to Cuba and to the North for my health, I am unable to answer this interrogatory particularly; all I know, is, that all the said notes were ultimately paid to my brother, who was my agent in New Orleans.

To the fifteenth interrogatory, on the part of the plaintiff, he answers as follows, viz: I do not know who occupied the premises after I sold them, having never been upon them after the act of sale was signed; I think I heard that Mrs. Wells resided on the premises in the summer of 1842.

To the sixteenth interrogatory, on the part of the plaintiff, he answers as follows, viz: I do not recollect having had any conversation with the said Banks, Wells, or Forgay, or any one on their behalf, after

the sale, respecting the said property, its state, the price or its payment, or touching any improvements made upon it.

To the seventeenth interrogatory, on the part of the plaintiff, he answers as follows, viz: I do not recollect any other fact in addition to what I have already stated, conducing to prove that S. L. Forgay became the purchaser of the said property for the use, benefit, or accommodation of any other person than himself.

To the additional interrogatory, on the part of complainant, he answers as follows, viz: I do not know, nor can I set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause.

WILLIAM FLORANCE.

I, William Rawle, the commissioner in the annexed commission named, and also the commissioner for the State of Louisiana, to take testimony in the State of Pennsylvania, do hereby certify, that the deponent, William Florance, was by me duly sworn to declare the truth on the questions put to him in this cause; that the interrogatories were produced to him, and his answers thereto taken in writing by me, and subscribed by him in my presence, on the day and at the place in that behalf first aforesaid.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] seal of office, this thirtieth day of July, anno domini one thousand eight hundred and forty-five.

WILLIAM RAWLE.
Commissioner.

And afterwards, to wit, on the second day of July, A. D. 1845, the following order was entered of record in this cause, on motion of complainant's solicitor, to wit:

On motion of William C. Micou, of counsel for complainant, it is ordered, that William J. Vason be appointed a commissioner in the above entitled cause, to take the depositions of sundry witnesses on interrogatories filed, and that a commission issue to him at the expiration of the usual delay, after service of said interrogatories upon defendants. It is further ordered that the delay for taking and returning testimony on both sides, in the above entitled cause, be extended to the first Monday of November, A. D. 1845.

And afterwards, [to] wit, on the sixteenth day of July, A. D. 1845, there issued from said court in said cause, the following commission, to wit:

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to William J. Vason, esq., greeting:

Know ye, that, reposing special trust and confidence in your integrity and ability, we do hereby authorize and require you, that you call and cause to come before you John A. Burn, Adolphe Meynier, John

Rogers, Sims, John S. Pritchard, William J. Andrews, A. W. Haynes, R. H. Haynes, George Sweet, Joseph Pilie, John Hewlett, John Harvey, Sargent, William Whitlett, Roper, E. H. Hornsby, E. W. Gregory, James Robb, J. S. Conklin, et al., and them duly examine on oath, and the annexed interrogatories, touching certain matters and things in a case now depending in the said court, wherein F. B. Conrad, assignee of Thomas Banks, is complainant, and Banks, Forgay, et al., are defendants; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this sixteenth day of July, anno [SEAL.] domini 1845, and the seventieth year of the independence of the United States of America.

ED. RANDOLPH, *Clerk*.
T. N. HARALSON, *D. Clerk*.

Notice of filing interrogatories.

F. B. CONRAD, assignee, &c., }
vs.
S. L. FORGAY, E. W. Wells, et al. }

To the defendants or their solicitors.

Please take notice, that written interrogatories have been filed in the clerk's office of the circuit court of the United States, for the State of Louisiana, addressed to John A. Burn, Adolphe Meynier, Simms, John S. Pritchard, Wm. J. Andrews, A. W. Haines, R. M. Haines, George Sweet, David John Rogers, Joseph Pilie, John Hewlett, John Harvey, Sargent, William Whitsell, Roper, E. H. Hornsby, E. W. Gregory, James Robb, J. S. Conklin, and other witnesses residing in New Orleans, and that in ten days from the service of this notice, the court will be moved for a commission to examine the said witnesses touching said interrogatories, and such cross interrogatories as you may see proper to file.

(Signed,) BENJAMIN & MICOU,
Solicitors.

CLERK'S OFFICE,
Circuit of the United States, district of Louisiana:

I hereby certify the *the* foregoing to be a true copy from the original on file in this office. Witness my hand and the seal of said court, at the city of New Orleans, this 1st day of July, 1845.

ED. RANDOLPH, *Clerk*.

Marshal's return.

Received July 1st, 1845, and on the same day I served a copy of the within notice on R. Hunt, esq., in person, at New Orleans, and

the 2d day of the same month I served a copy of the within notice on M. M. Cohen, esq., in person, at New Orleans.

J. P. WALDEN,
Deputy U. S. Marshal.

Interrogatories.

In the circuit court of the United States for the eastern district of Louisiana.

F. B. CONRAD, assignee of Thomas Banks,
vs.
GEO. ALLEN, S. L. Forgay, T. Banks, Wells and wife, et el.
} In equity.

Interrogatories to be propounded to John A. Burn, Adolphe Meynier, Sims, John S. Pritchard, William J. Andrews, A. W. Haines, R. M. Haines, George Sweet, David John Rogers, Joseph Pilie, John Hewlett, John Harvey, Sargent, William Whitsitt, Roper, J. S. Conklin, E. H. Hornsby, E. W. Gregory, James Robb, and other witnesses residing in the city of New Orleans, whose testimony is material to the cause of the complainant.

1st. General interrogatories to all the witnesses to be examined under commission.

1st. Are you acquainted with Thomas Banks, E. W. Wells and wife, S. L. Forgay, George Allan, William Robinson, free man of color, or any and which of them.

2d. Have you any knowledge of any property belonging to Thomas Banks, held in the name of either of the parties named in first interrogatory? If you have, then specify the property and what means you have of knowing the fact.

3d. Have you any knowledge of collections of notes or money made by either of the said parties above named, for or on account of Thomas Banks, or for his benefit or advantage, since the first day of June, 1842? If you have, then specify the same particularly, and say how you acquired the information.

4th. If there is any other matter or thing within your knowledge, tending to shew that the properties sued for in this suit were really the property of Thomas Banks, at the time of his bankruptcy, state fully and particularly all such facts. You are informed that the property in question consists of a new brick dwelling and lots, on which they are built, at the corner of Nayades and Calliope streets; a lot and appurtenances near the new Basin, now or lately occupied by one Priscilla Griffin, a free woman of color, and others; and a square of ground in Livaudais, parish of Jefferson, &c. State all the facts within your knowledge, touching said properties, and any right or interest of defendant Banks in them, fully and particularly.

Special interrogatories addressed to John A. Burn, W. J. Andrews, John W. Nixon, and other witnesses, residing near the new Basin, in New Orleans.

5th. Do you know certain premises near the new Basin, now or lately occupied by Priscilla Griffin, f. w. c.? Describe the situation of the premises, on what street fronting from which is the entrance.

6th. What buildings are erected on the said premises? What is about the value of the said buildings, when were they erected?

7th. Who have occupied them since June, 1842, to the present time? State the names of all the tenants if you can recollect them. To whom have the rents of the premises been paid? If you have any rent receipts or vouchers, showing payments of such rents, please annex them or present them to be copied.

8th Have you ever seen T. Banks in or about said premises since June, 1842? If yea, how often? What was he doing there? Did he assume any authority or control, or exercise any acts of ownership? If yea, then state particularly and specially, what acts were done by him, or what authority exercised in the premises, and how you know the facts to which you depose.

9th. Have you seen T. Banks engaged in reference to any improvements of the said property? If yea, state particularly when you saw him so engaged, and in what manner he was engaged.

10th. By whom were the buildings constructed? By whom was the work superintended? Were any slaves engaged in the work? If yea, to whom did they belong? Who directed them in their work?

11th. Are there other buildings on the premises besides those occupied by Priscilla Griffin? If yea, describe them, and where they stand.

12th. State every fact within your knowledge, tending to show that Banks is really the owner of the property held in the name of Wm. Robinson, f. m. c.

13th. What is the age or apparent age of Robinson, f. m. c? Where does he reside? What are his pecuniary circumstances? What business does he follow? Does he claim to be a relation of Priscilla? If yea, what relation; describe as well as you can, as to age, color, appearance, circumstances, and business; do you know of any other property held by him?

Special interrogatories to J. S. Conklin, Adolphe Meynier, Sims, and other witnesses.

14th. Do you know any thing of a certain levy made by the sheriff of the district court, in the suit of Trimmel vs. Priscilla Griffin, f. w. c., in the winter of 1843–'4, and state what means you have of knowing the facts. Were you engaged in the suit; if so, how? Were you present when the levy occurred?

15th. Where was the levy made? What property was taken? In whose possession?

16th. Was T. Banks present? If yea, when did he arrive? How long after the officer had appeared?

17th. Were any promissory notes found on the premises? If yea, state particularly by whom, where, and how they were found; who was present when the notes were found; did you see them? If yea, describe them as particularly and minutely as you can recollect.

18th. State every circumstance attending the seizure of the notes, minutely; were they carried away by the officer; if not, why did he not take them away; was any settlement made of the debt?

19th. Who claimed to be the owner of the notes; was William Robinson, f. m. c., present; did he claim to be the owner; was Banks present; what did he say about the notes? State all that occurred.

20th. If you say the debt for which the levy was made was paid, then say by whom it was paid; if paid by Priscilla, was the money advanced to her by any other person; if so, by whom?

21st. Was any offer made to release the property by giving security; if yea, by whom, and what security was offered?

Special interrogatories for David John Rogers, E. W. Gregory, James Robb, and other witnesses.

22nd. How long have you known George Allan, S. L. Forgay, and E. W. Wells?

23d. What is the business or occupation of S. L. Forgay; in what business has he been engaged for the last four years?

24th. In what employment has E. W. Wells been for the past four years; what salary has he received during that time; in whose employment is he?

25th. Is Wells a man of family; has he any family connection with T. Banks or Mrs. Banks, his wife; where does Wells' family reside; how long have they been resident there?

26th. What is the occupation and profession of George Allan; how long has he been so employed; what salary has he received; what does he now receive?

27th. Is Allan a man of family; how large a family has he; where does his family reside?

28th. Have you known Allan to be engaged in any other business than that already stated? If yea, in what business has he been engaged?

Special interrogatories for John Hewlett.

29th. Were you in 1842–'3 a tenant of T. Banks; if yea, of what building; how did you pay your rents; did you give notes; if yea, of what amount were the notes?

30th. To whom did you pay the notes as they respectively fell due; did you make payment of any, and which, of them to S. L. Forgay; did you pay them or any of them to George Allan, or to E. W. Wells, and which.

31st. Have you the notes in your possession? Have you any re-

ceipts for money paid on the notes? If you have either one or the other, please produce them before the commissioner, in order to have them copied, and copies annexed, or else permit the originals to be annexed.

Special interrogatories to George Sweet, or any member of the firm of M. D. Cooper & Co., of New Orleans.

32d. Were you a tenant of Thomas Banks' in 1842–'3? Of what house? Did you give notes for rent? If yea, of what amount?

33d. Please produce the notes you have paid for rent of said property in said years. State by whom they are respectively endorsed, and to whom they were respectively paid.

Special interrogatories to A. W. Haines, R. M. Haines, John Harvey, Sargeant, William Whitsell, Roper, John S. Pritchard.

34th. Were you a tenant of Thomas Banks' in the year 1842–'3? Of what house? Did you give notes for the rent? If yea, of what amount, respectively? How many of them have been paid?

35th. To whom did you pay the notes, respectively? Produce them before the commissioner, and say by whom they are respectively endorsed? If you can part with them, permit them to be filed with your answers. If not, let copies be made and identified.

36th. Did you pay any, and if any, which, and how many, of the notes to S. L. Forgay, George Allen, or to E. W. Wells? How many and which of them, bear the endorsement of either of said parties?

Special interrogatory to Joseph Pilie, esq.

37th. Were you the surveyor of the Second Municipality in the year 1843? Did you give the lines for a brick dwelling at the corner of Edward and Magazine streets in that year? If yea, to whom did you give the lines?

38th. Did you notice the said building while in progress? If so, how often? Who appeared to be superintending the work? Who now occupies the house?

39th. In whose name did the property stand at the time? In whose name was application made for the lines?

Special interrogatories to E. H. Hornsby and others.

40th. Do you not now, or have you not lately, occupied a house fronting on St. Paul street, near Julia street landing, in Second Municipality? Are you acquainted with the premises referred to, and how long have you been so?

41st. Describe the premises as nearly as you can? How many houses are there? How many tenements? How far are they from Julia street landing?

42d. Name all the tenants who, to your knowledge, have occupied the said premises since July, 1842, to this time?

43d. To whom have you paid your rents? To whom have said tenants respectively paid? If you have any receipts or vouchers, annex them to your answer, or present them to the commissioner to be copied.

44th. By whom, and when, were the houses built? Who has attended to them since you knew them?

45th. Who attends to renting the houses? Have you ever known Thos. Banks to exercise any acts of ownership, or control, or agency, over them, or any of them? If yea, then say what acts, with the time, &c.

General interrogatory to all the witnesses.

Do you know, or can you set forth, any other matter or thing which can be of benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answers.

BENJAMIN & MICOU, and
H. LOCKETT & R. H. WILDE,
Solicitors.

Depositions of Adolphe Meyneir and David John Rogers.

F. B. CONRAD, assignee of Thomas Banks,
vs.
GEORGE ALLAN, S. L. Forgay, Thomas Banks, E. W. Wells and wife, et al. } In equity.

In the circuit court of the United States for the eastern district of Louisiana.

By virtue of the annexed commission to me addressed, issued from the honorable circuit court of the United States in and for the eastern district of Louisiana, holding jurisdiction in equity therein, I have caused Adolphe Meynier and David John Rogers, two of the witnesses in said commission named, to come before me in my office in the custom house of the city of New Orleans, on this 30th day of August, 1845, at the hour of 12 o'clock, A. M., who being by me duly sworn, that is to say, the said Adolphe Meyneir being duly sworn upon the holy evangelist of Almighty God, and the said David John Rogers being solemnly affirmed to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories to them specially and generally propounded, and annexed to said commission, did depose and answer as follows, viz: And his answers thereto I reduced to writing in their presence, and they signed them in my presence.

Adolphe Meynier, being duly sworn, did depose and answer as follows, viz:

To the 1st general interrogatory he answers, that he is acquainted with Thomas Banks, and has seen William Robinson once; but that he is not acquainted with any other of the persons named in this interrogatory.

To the 2d, 3d, and 4th interrogatory he answers, that he knows nothing of the matters inquired about in these interrogatories.

To the 14th special interrogatory he answers, that he knows of a

certain levy made by the sheriff of the district court of the first judicial district of Louisiana, in the suit of John Trimmell vs. Priscilla Griffin, in the winter of 1843, 1844. Deponent was deputy sheriff of said court, and made the levy.

To the 15th special interrogatory he answers, that the levy was made at the house of Priscilla Griffin, fronting the new basin, in the second municipality. The property levied upon consisted of promissory notes in the possession of Priscilla Griffin.

To the 16th special interrogatory he answers, that Thomas Banks was present. Banks arrived there a few minutes after his, witness' arrival; he having been sent for by Priscilla Griffin.

To the 17th interrogatory he answers, that there were some promissory notes found on the premises. Witness told Priscilla Griffin to open a certain armoir which was in the second story of the house. She refused at first. He then told her, that if she did not open it, so that he might take an inventory of the property, he should be compelled to break it open. She then opened it, and commenced taking up, and placed in a silk handkerchief, something which he did not at first know; but afterwards, upon examining the contents, he found to be promissory notes. After tieing up the handkerchief, she handed, or endeavored to hand, it to Banks. Witness intercepted it, and asked what was in the handkerchief; Banks replied, that they were notes, tied up in the handkerchief, which were of no value, because they had been paid. Witness insisted upon seeing them, and untied the handkerchief; and there found several notes drawn by William Robinson, and paraphed "*ne varietur*" by J. B. Marks, notary public, each for the sum of eight hundred dollars, or thereabouts; the precise sum of each not recollected, nor the dates of the notes, or when payable. There were present, when the notes were found, Messrs. Banks, J. S. Conklin, Sims, and Franklin Haynes.

To the 18th special interrogatory he answers, that deponent went to the house of Priscilla Griffin, as deputy sheriff of said court, with a writ of fieri facias, issued from said court in the suit of John Trimmell vs. Priscilla Griffin, in company with J. S. Conklin, esq., attorney for the plaintiff in said suit, to levy upon the property of said Priscilla, out of which to make the amount of said writ. He demanded property of her to make a levy upon. She refused to pay the amount of the writ, or to point out any property, saying, that the furniture in the house was pledged to the landlord for the rent of said house for one year. He told her that he should, notwithstanding, seize the furniture. Mr. Franklin Haynes, accompanied by a Mr. Sims, then came into the house. Mr. Sims proposed to deponent to leave with him three hundred, the probable value of the furniture, as a guarantee, or security, for the forthcoming of the furniture, if deponent would leave the furniture in the house; which deponent agreed to accept. Deponent then commenced to take an inventory of the furniture in the house, and requested Priscilla Griffin to open an armoir for the purpose of examining and taking an inventory of its contents, which she at first re-

fused, as in manner already stated in his answer to interrogatory 17th. The said armoir was, however, opened, and the notes discovered by him, as also stated in his answer to said interrogatory. As witness was proceeding to take an inventory of the notes so found, he was stopped by Mr. Sims, who, at the pressing solicitation of Priscilla, paid to this deponent the amount of said writ of fieri facias, interest, and costs. Deponent then gave up said notes to Priscilla Griffin, in whose possession he found them. He refused to give them to Thomas Banks, who demanded them of this deponent.

To the 19th special interrogatory he answers, that when the notes were first discovered, Priscilla Griffin said that the notes had been deposited there for safe-keeping. After the payment of the debt by Mr. Sims, Thomas Banks claimed the notes. William Robinson, a f. m. c., was present, and appeared much scared. He did not say much, but deponent thinks that [he] either claimed to be the owner, or Priscilla Griffin said that he was the owner, of the notes. Thomas Banks was present, and said that the notes were of no value; that they had been paid. Banks made himself very busy about the matter, and appeared to take a great interest in the business.

To the 20th special interrogatory he answers, that the amount of the execution was paid by Mr. Sims at the pressing solicitation of Priscilla Griffin. Sims paid the money to deponent.

To the 21st special interrogatory he answers, that Mr. Sims made an offer to have the furniture released from the levy, by giving to this deponent three hundred dollars, the probable value of the furniture; and deponent, as already stated, agreed to accept the three hundred dollars, and leave the property in the house until it should be called for by the sheriff. This agreement was afterwards annulled, by the payment of the amount of the execution, after the discovery [of] notes as already stated in his answers to 17th and 18th interrogatories.

To the last general interrogatory he answers, that he is not aware that he knows any other matter of fact, or thing, which can be of any advantage to either of the parties to this suit, or material to the subject matter of this his examination.

A. MEYNIER.

Answered, sworn to, and subscribed, before me, this 30th day of August, 1845.

W. J. VASON,
U. S. comm'r in and for cir't and dis't courts of eastern district of Louisiana.

And thereupon came David John Rogers, who, having solemnly affirmed to speak the truth, the whole truth, and nothing but the truth, in answering the said interrogatories, to him specially and generally addressed, did answer and say as follows, viz:

David John Rogers, being duly affirmed, deposeth and answers as follows, to wit, viz:

To the 1st general interrogatory he answers, that he is acquainted

with Thomas Banks, E. W. Wells and wife, S. L. Forgay, and George Allan, but knows not William Robinson.

To the 2d, 3d, and 4th general interrogatories, he answers, that he knows nothing of the several matters inquired of in these interrogatories.

To the 22d special interrogatory he answers, that he has known E. W. Wells from his boyhood, having gone to school with him. He has known George Allan and S. L. Forgay about ten years.

To the 23d special interrogatory he answers, that S. L. Forgay is contractor for paving by occupation, and has been engaged in that business for the last four years.

To the 24th special interrogatory he answers, that E. W. Wells has been engaged in the employment of the Gas Light and Banking Company of this city, as secretary, for the last ten years. His salary is three thousand dollars per annum. For the last four years previous thereto, his salary was four thousand dollars per annum. He is still the secretary of said company.

To the 25th special interrogatory he answers, that E. W. Wells is a man of family, and is the son-in-law of Thomas Banks; his family resides at the corner of Caliope and Nayades streets, in the 2d municipality, in a house said to belong to S. L. Forgay, and has resided there ever since said house was built.

To the 26th special interrogatory he answers, that George Allan's occupation is that of foreman in the gas fitting shop of the Gas Light Company. He has been so employed for about ten years; his salary has been from twenty-four hundred to eighteen hundred dollars per annum; which last sum he now receives.

To the 27th special interrogatory he answers, that George Allan has a family, consisting of his wife and four or five children; he resides in a small house at the corner of Girod and Gravier streets, belonging to him.

To the 28th special interrogatory he answers, that he has known George Allan to engage in buying small lots of ground, situated in the 2d municipality near the gas works, and to improve them; he is an industrious enterprising man.

To the last general interrogatory he answers, that he knows nothing more that he is aware of, which can be of any advantage to either of the parties to this suit, or material to the subject of this his examination.

DAVID JNO. ROGERS.

Answered, affirmed to, and subscribed before me, on this 30th day of August, 1845.

WM. J. VASON,

U. S. commiss'r in and for cir. and dist. courts in E. dist. of La.

Deposition of W. J. Andrews.

F. B. CONRAD, assignee of Thomas Banks,
vs.
GEO. ALLAN, S. L. Forgay, Thos. Banks, E. W. Wells and wife, et al. } In equity.

In the circuit court of the United States for the eastern district of Louisiana.

By virtue of the annexed commission to me addressed, issued from the honorable circuit court of the United States in and for the eastern district of Louisiana, holding jurisdiction in chancery, I have caused William J. Andrews, one of the witnesses therein named, to come before me at my office in the custom house in the city of New Orleans, on this 12th day of August, 1845, at the hour of 10 o'clock A. M., who being duly sworn upon the holy evangelist of Almighty God to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories to him specially and generally addressed, to said commissed annexed, did depose and answer as follows, viz: and his answers thereto I reduced to writing in his presence, and he signed them in my presence.

To the 1st interrogatory he answers, that he is acquainted with Thomas Banks, E. W. Wells, S. L. Forgay, George Allan, but he is not acquainted with the wife of E. W. Wells, nor with William Robinson, a free man of color.

To the 2d interrogatory he answers, that he has no knowledge of any property belonging to Thomas Banks, held in the names or name of either of the other defendants.

To the 3d interrogatory he answers, that he knows nothing of the matter inquired of in this interrogatory.

To the 4th interrogatory he states, that he knows the property at the corner of Nayades and Calliope streets, and the property near the new basin, but does not know to whom it belongs; he knows nothing about the property in Livaudais.

To the 5th special interrogatory he answers, that he knows the premises near the new basin, referred to in this interrogatory, lately occupied by a free woman of color; her name he does not know. The premises are situated on St. Paul street, about one hundred feet from the corner [of] Julia street landing, in the 2d municipality in this city; the houses front on St. Paul street, and have an entrance from said street.

To the 6th special interrogatory he answers, that there are erected on said premises two two-story wood buildings, divided into four tenements; the buildings were erected in the year 1842, or the latter part of 1841, and are worth about seven hundred dollars each.

To the 7th special interrogatory he answers, that the colored woman above referred to, whose name he knows not, occupied one of the tenements for about one year and a half or more after the houses were erected; E. H. Hornsby occupied one of the tenements for a little

more than one year. He does not know the names of the other tenants; he does not know to whom they paid their rent, or whether they paid any; he has no receipts or vouchers showing the payment of rents.

To the 8th special interrogatory he answers, that he has seen Thomas Banks passing in and out of said buildings frequently since June, 1842; can't say how often, nor what was [his] business there; can't say whether Banks assumed any authority, or exercised any acts of ownership over the premises. He saw Banks, he thinks, in the early part of 1844, superintend the making of the banquette in front of the houses.

To the 9th special interrogatory he states, that he has answered this interrogatory in his answer to the 8th interrogatory. The fact there stated is the only thing he now recollects he ever saw Banks engaged in reference to the improving of said houses or premises.

To the 10th special interrogatory he answers, that Thomas Banks superintended the constructing of the said buildings; there were slaves engaged in doing the work, who belonged to Banks. He presumes that they belonged to him, from the fact that he directed them in their work, and was the reputed owner of them.

To the 11th interrogatory he answers, that there is a small cottage building erected on the said lots, which stand in rear of the said two-story buildings before referred to.

To the 12th special interrogatory he answers, that he knows of no other fact which tends to show that Banks is the real owner of the property held in the name of W. Robinson.

To the 13th special interrogatory he answers, that he knows not W. Robinson, a free man of color, and consequently cannot answer any of the matters or things inquired of this question. He knows of no property held or owned by W. Robinson.

To the last general interrogatory he answers, that he is not aware that he knows any matters of fact or thing which can be of any benefit or advantage to either of the parties to this suit, not above herein stated.

WM. J. ANDREWS.

Answered, sworn to, and subscribed before me, on this 12th day of August, 1845.

W. J. VASON,
U. S. comm'r in and for cir. and dist. of La.

Deposition of John Hewlett.

F. B. CONARD, assignee of Thomas Banks,
vs.
GEO. ALLAN, S. L. Forgay, Thos. Banks, Wells and wife, et al. } In equity.

In the circuit court of the United States for the eastern district of Louisiana.

By virtue of the annexed commission to me addressed, issued from the honorable the circuit court of the United States in and for the eastern district of Louisiana, holding jurisdiction in chancery therein, I have

caused John Hewlett, one of the witnesses named in said commission, to come before me, in my office in the custom house in the city of New Orleans, on this the 13th day of August, 1845, at the hour of 10 o'clock A. M.; and the said John Hewlett, being duly sworn by me on the holy evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories generally and specially addressed to him, annexed to said commission, did depose and answer as follows, viz.; and his answers hereto I reduced to writing in his presence, and he signed them in my presence.

To the 1st interrogatory he answers, that he is acquainted with George Allan, Thomas Banks, S. L. Forgay, E. W. Wells and wife, but is not acquainted with Wm. Robinson, a free man of color.

To the 2nd, 3rd, and 4th interrogatories he answers, that he knows nothing of the matters inquired of in these interrogatories.

To the 29th special interrogatory he answers, that he was a tenant of Thomas Banks during the year 1842, and part of the year 1843, ending some time about the first of June of the year 1843. He occupied the principal part of the building known as Banks' arcade, situated on Magazine street, in the city of New Orleans; he gave his notes for the rent of said building, or for the part thereof rented by him. The rental year commenced the 25th day of April, 1842, and terminated the 25th April, 1843; and for the rent of that period, he gave the said Banks his four several promissory notes, all dated the 25th day of April, 1842, each for the sum of two thousand dollars, due respectively at three, six, nine, and twelve months.

To the 30th special interrogatory he answers, that he paid the note due at three months to S. L. Forgay; the note due at six months he paid to Thomas Banks, he thinks, but is not certain to whom he paid it; the note due at nine months he paid to R. C. Cammack; the fourth and last note, due at 12 months, he has paid in part to George Allan, leaving a balance of one or two hundred and fifty dollars, or thereabouts, still due and unpaid.

To the 31st special interrogatory he answers, that he has in his possession three of the said notes, which he has paid; the fourth note he has not in his possession; the amount he has paid on account of said note is credited on said note; the said three notes which he has paid he now presents *to the presents* to the undersigned commissioner, to be annexed to this his deposition, as part thereof.

$2,000. NEW ORLEANS, *25th April*, 1842.

Nine months after date, I promise to pay to the order of Thomas Banks the sum of two thousand dollars, for value received in rent.

Due 25–28 January, 1843.

Endorsed.—THOS. BANKS.

Received three hundred dollars on account of the within note, 30th January, 1843.

$300. R. C. CAMMACK.

This note presented to the undersigned commissioner, to be annexed to his answers as part thereof, by John Hewlett, to interrogatories propounded to him by the complainant, in the matter of F. B. Conrad, assignee, vs. Banks, Wells and wife, et al.

W. J. VASON,
U. S. comm'r cir. and dist. courts E. dist. of La.

$2,000. NEW ORLEANS, *25th April*, 1842.

Six months after date, I promise to pay to the order of Thomas Banks two thousand dollars, for value received in rent.

Endorsed.—THOS. BANKS.

This note presented to the undersigned commissioner, to be annexed to his answers as part thereof, by John Hewlett, to interrogatories propounded to him by complainant, in the matter of F. B. Conrad, assignee, vs. Banks, Wells and wife, et al.

W. J. VASON,
U. S. comm'r cir. and dist. courts E. dist. of La.

$2,000. NEW ORLEANS, *25th April*, 1842.

Three months after date, I promise to pay to the order of Thomas Banks two thousand dollars, for value received in rent.

Endorsed.—THOS. BANKS,
SAMUEL L. FORGAY.

Received, on account of the within note, six hundred dollars.

SAM'L L. FORGAY.

New Orleans, Dec'r 21, '42.

Received, on account of the within note, two hundred dollars.

SAM'L L. FORGAY.

January 30th, 1843.

Received, March 2, 1843, on account of the within note, two hundred dollars.

S. L. FORGAY,
Per M. S. BREEGAN.

Received on the above note two hundred dollars, July 10th, 1843, for S. L. Forgay.

E. UNDERHILL.

Received on the above note, April 18th, 1843, two hundred dollars.

S. L. FORGAY,
Per H. C. STEBBINS.

This note presented to the undersigned commissioner, by John Hewlett, to be annexed to his answers as part thereof, to the interrogatories propounded to him by the complainant in the matter of F. B. Conrad, assignee, vs. Banks, Wells and wife, et al.

W. J. VASON,
U. S. com'r cir. and dist. courts in and for the E. dist. of La.

To the last general interrogatory he states, that he is not aware that he knows any other matter of fact, or thing, which can be of any benefit or advantage to either of the parties to this suit, or material to the subject of his examination. And further deponent sayeth not.

JOHN HEWLETT.

Answered, sworn to, and subscribed before me, on this 13th day of August, 1845.

W. J. VASON, [SEAL.]
U. S. comm'r, circuit and dist. court of E. dist. of La.

Deposition of J. S. Conklin.

F. B. CONRAD, assignee of Thos. Banks, vs. GEORGE ALLAN, S. L. FORGAY, THOS. BANKS, E. W. WELLS & WIFE, et al. } In equity.

In the circuit court of the United States, for the eastern district of Louisiana.

By virtue of the annexed commission to me addressed, issued from the honorable the circuit court of the United States, in and for the eastern district of Louisiana, holding jurisdiction in chancery therein, I have caused J. S. Conklin, one of the witnesses in said commissioned named, to come before me, on this the 24th day of September, 1845, in my office, in the custom house in the city of New Orleans, at the hour of 12 o'clock M., and the said J. S. Conklin being by me duly sworn, on the Holy Evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories generally and specially propounded to him by the complainant in the suit above entitled, annexed to said commission, did depose and answer, as follows: and his said answers I reduced to writing in his presence, and he signed them, so written, in my presence, viz:

To the first general interrogatory he answers, that he knows Thomas Banks, and is slightly acquainted with S. L. Forgay; he knows not any of the persons named in this interrogatory.

To the 2nd, 3rd, and 4th general interrogatories he answers, that he knows nothing of the several matters enquired of in said interrogatories, that he is aware can benefit either of the parties of this suit.

To the 14th special interrogatory he answers, that he was the plaintiff's attorney in the suit of Jno. Trimmell vs. Priscilla Griffin et al., in the district court of the first judicial dist. of La., and that he knows that a levy was made by the deputy sheriff of said court, in virtue of a writ of fi. fa., issued in said case in the winter of 1843 and 1844, because he went with said deputy sheriff to the house of said Priscilla Griffin for the purpose of making the levy, but was not present at the moment of the levy's being made.

To the 15th special interrogatory he answers, that the levy was made at the house of Priscilla Griffin, near the new basin in the 2nd munici-

pality in the city of New Orleans. A package of mortgage notes, drawn by William Robinson, and endorsed by him, as deponent believes, was levied upon by said deputy sheriff; said notes were found in an armoir in said house, as deponent was informed by said officer.

To the 16th special interrogatory he answers, that Thomas Banks was present in the house before and after the seizure; does not know whether he was in the house at the moment the seizure was made, as this deponent was not in the house at the moment of seizure. Thomas Banks arrived a few minutes after the arrival of the officer at the house.

To the 17th special interrogatory he answers, that the notes above referred to were found on the premises by the said deputy sheriff; does not know, of his own knowledge, where said notes were found; he saw them after they were seized; they were mortgage notes, about eight hundred dollars each, amounting in all to amount fourteen thousand dollars, as near as affiant now recollects.

To the 18th special interrogatory he answers, that he cannot state more particularly the circumstances attending the seizure than he has already done, except that he directed the said deputy sheriff to watch the armoir in which said notes were found, as stated to him by the said officer. The notes were not carried away from the house by said officer, because the amount of said writ of fi. fa. was paid to said officer.

To the 19th special interrogatory he answers, that it is hard for affiant to say who claimed to be the owner of said notes, as Banks, Priscilla, and Robinson, and their attorney, Franklin Haynes, esq., all told different stories, and all appeared "*flummuxed.*" William Robinson was present, and said but little, and does not recollect whether he claimed to be owner or not. Thomas Banks was present, and said, as near as affiant now recollects, that the notes did not belong to Priscilla; much was said and threatened which affiant cannot now repeat; there was a "fuss general."

To 20th special interrogatory he answers, that the money which was paid to the deputy sheriff came from the hands of a man named Sims, a young man, who was a clerk in a store in Chartres street in this city.

To 21st special interrogatory he answers, that an offer was made to release the property by giving security; does not recollect who made the offer, but money was offered by some one of the parties.

To the last general interrogatory he answers, that he knows nothing more that can benefit either of the parties to this suit, or that he deems material to the subject matter of this examination. And further deponent saith not.

J. S. CONKLIN.

Answered, sworn to, and subscribed before me, on the day and date above written.

W. J. VASON, [SEAL.]
U. S. comm'r in and for E. Dist. of La.

Deposition of A. W. Haines.

In the circuit court of the United States, for the eastern district of Louisiana.

F. B. CONRAD, assignee of Thomas Banks, vs. GEO. ALLAN, S. L. Forgay, Thomas Banks, E. W. Wells and wife, et al. } In equity.

By virtue of the annexed commission to me addressed, issued from the honorable the circuit court of the United States, in and for the eastern district of Louisiana, holding jurisdiction in chancery therein, I have caused A. W. Haines, one of the witnesses in said commission named, to come before me on this 13th day of August, 1845, in my office in the custom-house, in the city of New Orleans, at the hour of 12 o'clock, A. M.; and the said A. W. Haines being by me duly sworn on the Holy Evangelist of Almighty God, to tell the truth, the whole truth, and nothing but the truth, in answering the several interrogatories generally and specially propounded to him by the complainant in said suit, and hereto annexed, did depose and answer as follows, viz.; which answers I reduced to writing in his presence, and he signed them in my presence.

To the 1st general interrogatory he answered, that he is acquainted with Thomas Banks, E. W. Wells, George Allan, and S. L. Forgay, but that he is not acquainted with Mrs. Wells, nor William Robinson.

To the 2d, 3d, and 4th general interrogatories he answers, that he knows nothing of the matters enquired of in these interrogatories.

To the 34th special interrogatory he answers, that on or about the first day of October, 1841, he leased from Thomas Banks two buildings, known as Nos. 23 and 25, situate on Commerce street, in the 2d municipality in this city, for the term of three years, commencing the first of October, 1841, and terminating the first of October, 1844, at and for the sum of one thousand dollars per annum, payable quarterly. For the first year's rent, witness thinks that he did not give any notes; for the rent of the two last years, he gave his several eight promissory notes, all dated 1st October, 1841, each for the sum of two hundred and fifty dollars, payable to said Thomas Banks or order, on the first day of January, April, July, and October, respectively, 1843 and 1844.

To the 35th special interrogatory he answers, that he paid the first year's rent to J. B. Marks, notary public; two of the notes he gave for the second year's rent, he paid, the one falling due 1st January, 1843, he paid to R. C. Cammack, deposited at Robb & Hoge's banking house in this city. He does not recollect to whom he paid the one falling due 1st Apr l, 1843. He cannot produce it; he paid two thirds of the one falling due 1st July, 1843, to a clerk of J. B. Marks, notary public; it was endorsed by George Allan; the other third part of said note he paid to the Union Bank of this city, said bank having purchas-

ed said property. Deponent says that he cannot produce but one of said notes, which he now presents to the undersigned commissioner, and also the receipt for the first quarter's rent of the first year, which he consents to be filed as part of his answer. Five of said notes given by him, witness states are now, or were lately, in the hands of F. B. Conrad, the complainant.

To the 36th special interrogatory he answers, that he paid none of said notes to S. L. Forgay or E. W. Wells, as above stated; he paid two thirds of one of said notes to a clerk of J. B. Marks, who presented said note endorsed by George Allan; except the one so paid, he knows not whether any of said notes bear the endorsement of either of said persons.

To the last general interrogatory he answers, that he is not aware that he knows any other matter of fact or thing which can be of any benefit or advantage to either of the parties to this suit, or material to this his examination; and further this deponent sayeth not.

A. W. HAINES.

Answered, sworn to, and subscribed before me, on this 13th day of August, 1845.

W. J. VASON,
U. S. comm'r in and for cir't and dis't courts,
east. dis't of Louisiana.

Note.

$250] NEW ORLEANS, *Oct.* 1, 1841.

On the first day of January, 1843, (fixed,) I promise to pay to the order of Thomas Banks, two hundred and fifty dollars, for value received in rent.

A. W. HAINES.

(Endorsed,) THO'S BANKS,
RO. C. CAMMACK.

This note presented to the undersigned commissioner by A. W. Haines, to be filed as part of his answer to the interrogatories propounded to him by complainant in said suit.

W. J. VASON,
U. S. comm'r in cir't and dis't courts,
east. dis't of Louisiana.

Received, New Orleans, Jan'y 11, 1842, of Messrs. A. W. & R. M. Haines, two hundred and fifty dollars, for rent of premises in Commerce street, up to 1st of January, 1842.

D. J. RICARDO,
$250] For THOS. BANKS.

Deposition of Wm. Whitla.

In the circuit court of the United States, in and for the eastern district of Louisiana.

F. B. CONRAD, assignee of Thomas Banks,
vs.
GEORGE ALLAN, S. L. Forgay, Wells and wife, et al.
} In equity.

By virtue of the annexed commission to me addressed, issued from the honorable circuit court of the United States, in and for the eastern district of Louisiana, holding jurisdiction therein, I have caused William Whitla, one of the witnesses named in said commission, to come before me in my office in the custom-house, in the city of New Orleans, on this 14th day of August, 1845, at the hour of 10 o'clock, A. M.; and the said William Whitla being by me duly sworn on the Holy Evangelist of Almightly God to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories specially and generally propounded to him, annexed to said commission, and herewith accompanying, did depose and answer as follows, viz.; and his answers thereto I reduced to writing in his presence, and he signed them in my presence.

To the 1st general interrogatory he answers, that he is acquainted with George Allan, Thomas Banks, E. W. Wells and wife, S. L. Forgay, but that he is not acquainted with William Robertson.

To the 2d, 3d, and 4th interrogatories he answers, that he knows nothing of the matters inquired of in these interrogatories.

To the 34th special interrogatory he answers, that he was not a tenant of Thomas Banks during the years 1842 and 1843. On the 1st of May, 1844, he leased a lumber yard from Thomas Banks, situate near the corner of St. Paul and Julia street's landing, in the 2d municipality in this city, for the term of two years and eight months, commencing 1st May, 1844, and ending the 31st of November, 1846, at and for the sum of eight hundred dollars; in payment of which sum he gave his eight several promissory notes, each dated the 1st May, 1844, each for the sum of one hundred dollars, payable to the said Thomas Banks or order, one due 1st of August, 1844, one on 1st December, 1844, one on 1st April, one on 1st August, one on 1st December, 1845, one on 1st April, one on 1st August, and one on 1st December, 1846.

To the 35th special interrogatory he answers, that he has paid all of said notes to Thomas Banks, and the witness now presents said notes to the undersigned commissioner. He says that he cannot permit them to be filed with his answers, but consents that the undersigned commissioner take copies of them.

To the 36th interrogatory he answers, that he did not pay any of said notes to S. L. Forgay, George Allan, or E. W. Wells; none of said notes bear the endorsement of any other person than that of Thomas Banks.

To the last general interrogatory he answers, that he is not aware that he knows any other matter or thing that can be of any benefit or advantage to either of the parties to this suit, or material to the subject of his examination; and further this deponent saith not.

WM. WHITLA.

Answered, sworn to, and subscribed in the presence of the undersigned commissioner, this 14th August, 1845.

W. J. VASON, [SEAL.]
U. S. comm'r of cir't and dis't courts
in and for eastern district of La.

Copies of the notes presented to the undersigned commissioner by William Whitla, on his examination above taken before me.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of August, 1844, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THO. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of December, 1844, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THOMAS BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of April, 1845, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THOS. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of August, 1845, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THOS. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of December, 1845, I promise to pay to Thos. Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THOS. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of April, 1846, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.
(Endorsed) THOS. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of August, 1846, I promise to pay Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.

(Endorsed) THOS. BANKS.

$100. NEW ORLEANS, *May* 1*st*, 1844.

On the first day of December, 1846, I promise to pay to Thomas Banks or order one hundred dollars, for value received in rent.

(Signed) WM. WHITLA.

(Endorsed) THOS. BANKS,

Deposition of E. H. Hornsby.

In the circuit court of the United States, for the eastern district of Louisiana:

F. B. CONRAD, assignee of Thos. Banks,
vs.
GEORGE ALLAN, S. L. Forgay, Thomas Banks, Wells, wife, et al. } In equity.

By virtue of the annexed commission to me addressed, issued from the honorable circuit court of the United States, in and for the eastern district of Louisiana, holding jurisdiction in chancery therein, I have caused E. H. Hornsby, one of the witnesses named in said commission, to come before me on this 15th day of August, A. D. 1845, in my office in the custom house, in the city of New Orleans, at the hour of 10 o'clock, A. M.; and the said E. H. Hornsby, being by me duly sworn on the Holy Evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in answering the several interrogatories specially and generally propounded to him, annexed to the said commission, did depose and answer as follows, viz.; and his answers thereto I reduced to writing in his presence, and he signed them in my presence.

To the 1st general interrogatory he answers, that he is acquainted with Thomas Banks, S. L. Forgay, and E. W. Wells, but he is not acquainted with George Allan, or with Wm. Robinson, a free man of color, or with Mrs. Wells.

To the 2nd, 3d, and 4th general interrogatories he answers, that he knows nothing about the matters and things enquired of in these interrogatories.

To the 40th special interrogatory he answers, that he lately occupied a tenement in a house fronting on St. Paul street, near Julia street, in the 2d municipality in this city; that he left said tenement on the first of July last, having occupied the same seven or eight months; says that he is acquainted with the premises, and has been for the last two years or more.

To the 41st special interrogatory he answers, that there are two two-story wood houses, built on said lots, divided into four tenements, viz: Each house is divided into two tenements; they are situate on St. Paul street, near or next to the corner lot [on] Julia and St. Paul streets.

To the 42nd special interrogatory he answers, that the tenement he occupied was occupied by a man named Armstrong before he occupied it; how long he occupied it does not know; the other tenement of said house is now occupied, and has been for more than a year, occupied by a man named Perry. The persons who occupied the tenements in the other of said houses, he knows not nor does not recollect, except that a Mr. Lamotte lived in one of said tenements for a time.

To the 43d special interrogatory he answers, that he has paid the rent due by him for the use of said tenements to a colored woman named Priscilla, who receipted for the rent in the name of some person whose name is not now recollected. He does not know to whom the other tenants paid their rent. The receipts which he took from Priscilla may or may [not] be in his possession. He thinks some of them are, but has them not with him; will search for them, and if he finds them, will hand them to the undersigned to be copied. The witness delivered the nine original receipts, herewith annexed, to be filed as part of his answer to the foregoing interrogatory, marked A, B, C, D, E, F, G, [H,] I.

To the 44th special interrogatory he answers, that he does not know who built said houses, or when they were built. The colored woman Priscilla has attended to the houses ever since he has been acquainted with the premises.

To the 45th special interrogatory he answers, that Priscilla attended to the renting of the houses. He has seen Thomas Banks superintending the making the banquettes in front of the houses, but he disclaimed being the owner of them, though he paid witness for the sand used in making said banquettes.

To the last general interrogatory he answers, that he is not aware that he knows any other matter of fact or thing which can be of any benefit or advantage to either of the parties to said suit, or material to the subject of this his examination.

And further this deponent saith not.

E. H. HORNSBY.

Answered, sworn to, and subscribed before me, on this 15th day of August, 1845.

W. J. VASON, [SEAL.]
U. S. comm'r in and for E. Dist. of La.

I.

Received, New Orleans, June 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

ANT'E HEBRARD.

H.

Rec'd, New Orleans, May 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

ANT'E HEBRARD.

G.

Rec'd, New Orleans, March 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

ANT'E HEBRARD.

F.

Rec'd, New Orleans, March 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

$15 00 ANT'E HEBRARD.

E.

Received, New Orleans, Jan'y 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent.

ANT'E HEBRARD.

D.

Received, New Orleans, February 1st, 1845, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

ANT'E HEBRARD.

$15 C.

Received, New Orleans, December 1st, 1844, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

WM. ROBERTSON.

B.

Received, New Orleans, November 1st, 1844, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

WM. ROBERTSON.

A.

Received, New Orleans, October 1st, 1844, of Mr. Hornsby, fifteen dollars cents, in full for rent to date.

WM. ROBERTSON.

And afterwards, to wit, on the ninth day of October, A. D. 1845, the following agreement was made and entered of record by the solicitors, both of the complainant and defendants.

F. B. Conrad, assignee of Thomas Banks,
vs.
Thomas Banks, S. L. Forgay, E. W. Wells, W. Robertson, et als.

In circuit court of the United States for Louisiana, sitting in chancery.

It is agreed, that either party, complainant or defendants, may use in evidence in this cause any part of the evidence or testimony, oral or documentary, that was offered and received in the district court of the State, for the first district, in the suit of the City Bank of New Orleans

vs. Thomas Banks and Wife, copies to be procured by the party offering the same, and filed on or before the 3d Monday in December next.

New Orleans, Oct. 9, 1845.

BENJAMIN & MICOU,
For complainant.
M. M. COHEN,
For defendants Banks, Allan, Whitla, and Robinson.
R. HUNT,
For S. L. Forgay, E. W. Wells and wife.

And afterwards, to wit, on the seventeenth day of October, A. D. 1845, the following order was entered of record in this cause, upon motion of the defendant.

On motion of M. M. Cohen, solicitor for George Allan, one of the above defendants, it is ordered, that a commission do issue, directed to N. R. Jennings, commissioner, to take the testimony of Charles Graham and Jas. H. Caldwell, on interrogatories filed on behalf of said Allan, and such cross interrogatories as complainant, or his solicitors, may file within ten days after notice of the filing of said interrogatories.

Notice.—In chancery.

Circuit court of the United States, for the eastern district of Louisiana.

F. B. CONRAD, assignee of T. Banks,
vs.
THOMAS BANKS et als.

To the defendants or their solicitors.

Please take notice, that written interrogatories have been filed on the part of George Allan, one of the above named defendants, in the office of the clerk of said court, intended to be exhibited to Charles Graham and Jas. H. Caldwell; and that, on my motion, the court has granted a commission, directed to N. R. Jennings, commissioner, to examine said witnesses on said interrogatories, and such cross interrogatories as you may see proper to file within ten days after service of this notice.

M. M. COHEN,
Solicitor for George Allan.

Marshal's return.

Received October 17th, 1845, and same day served a copy of the within, together with a copy of interrogatories, on Henry Lockett, esq., solicitor for the defendants, in person, at his office in Camp street.

WM. K. STILES,
Deputy U. S. marshal.

In chancery.

Interrogatories to be administered to James H. Caldwell and Graham, witnesses to be produced, sworn, and examined, in a certain cause now depending and at issue in the circuit court of the United

States for the eastern district of Louisiana, wherein Francis B. Conrad, assignee of Thomas Banks, is complainant, and Ann Foggarty, otherwise called Ann Wells, wife of Edward W. Wells, and the said Edward W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, f. m. c., and George Allan, are defendants, on the part of said defendant, George Allan.

1st interrogatory. What is your name, age, occupation or profession? Do you know George Allan, the party defendant in the title to these interrogatories named, and how long have you known him? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

2d interrogatory. Do you or not know in what business he has been engaged, and where, and when? If yea, declare the truth, and your utmost knowledge, remembrance, and belief herein.

3d interrogatory. Have you or not any knowledge of his loaning money on interest, and to whom, and when; and of purchasing notes, and from whom, and when? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

4th interrogatory. Do you or not know whether said George Allan was in the habit of speculating in real estate, or in other property? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

5th interrogatory. What do you consider the value of his estate, or do you know what he is worth? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

6th interrogatory. Do you or not know what were his pecuniary circumstances on his arrival in New Orleans, and prior to that period? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

7th interrogatory. Is said George Allan a man of indolent and extravagant habits, or industrious and prudent habits? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

8th interrogatory. Do you or not know whether he has had for some years past, and how long, opportunities of making money, other than by his salary from the New Orleans Gas Light Company, and whether he has embraced such opportunities? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

9th interrogatory. Do you consider him a man likely to make a profit, or to lose money by his speculations and business transactions? Is he shrewd, intelligent, prudent, and methodical in conducting his affairs, or is he careless, loose, likely to make bad bargains, and easily imposed upon? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

10th interrogatory. What is his general character for integrity, punctuality, morality, and good faith? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

11th interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at

issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

M. M. COHEN,
Solicitor for George Allan.

Cross interrogatories propounded to James H. Caldwell and Graham, witnesses, to be sworn and examined on behalf of defendant George Allan, in the suit of Francis B. Conrad, assignee, &c., vs. Thomas Banks and others, defendants.

1st. Have you any very particular knowledge of the pecuniary means and circumstances of George Allan? If you have, how did you acquire the same?

2d. Have you any other knowledge on the subject, except what you have derived from a general acquaintance with Mr. Allan?

3d. If, in answer to the third interrogatory, you speak of the purchase of notes by Mr. Allan, then state precisely all the notes to your knowledge purchased by him. Who were the makers? What was the amount? When did he purchase them? From whom? What did he give for them respectively? How did you acquire information on the subject?

4th. Did you ever converse with Mr. Allan about his discounting notes? Did he ever speak about the funds used by him for that purpose? If yea, what did he say on the subject? Have you ever heard him say that he was supplied with funds by others, or by a friend; or any thing of like import or effect? and state what he said on the subject.

5th. What is the business of Mr. Allan? Is he not an officer of the Gas Company? Has he not been in their employment for several years past, and how long?

6th. What is the amount of George Allan's salary at present? What amount of salary has he received each year since he has been in the employment of the company, so far as you know the same?

7th. Is Mr. Allan single or married, and what family has he? Does his family reside in New Orleans?

8th. If you speak of speculations in real estate by Mr. Allan, you will please annex to your answer copies of his several acts of purchase and of sale?

9th. Do not the duties of Mr. Allan, as an officer of the Gas Company, require all, or nearly all, his time? Has he conducted any other business regularly since he has been in the employment of said company?

10th. If you reply affirmatively to the 8th direct interrogatory, then state the particular opportunities that he has embraced, with details of time, amount, and circumstances, and say how they came within your knowledge.

11th. If you are acquainted with any other circumstance favorable to the plaintiff in this cause, state the same fully and particularly.

The plaintiff, reserving his exception to oral testimony as proof of speculations in real estates, files the above cross interrogatories.

BENJAMIN & MICOU,
LOCKETT & WILDE,
Solicitors for complainants.

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to W. J. Vason, esq , commissioner.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, James H. Caldwell and Graham, and them duly examine on oath, and the annexed interrogatories and cross interrogatories touching and concerning certain matters and things in a case now depending in the said court, wherein Francis B. Conrad, assignee, &c., is complainant, and Banks, Forgay et al., are defendants, on behalf of defendant George Allan.

And the same examinations, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this
[L. S.] twenty-eighth day of October, anno domini 1845, and the 70th year of the independence of the United States of America.

ED. RANDOLPH, *Clerk.*
F. N. HARALSON, *Dy. clerk.*

F. B. CONRAD, assignee of Thomas Banks, complainant,
vs.
BANKS, FORGAY et al.
} In chancery, &c.

In the U. S. circuit court, in and for the eastern district of Louisiana.

By virtue of the annexed commission, to me addressed, issued from the honorable the circuit court of the United States for the eastern district of Louisiana, I have caused James H. Caldwell, one of the witnesses in said commission named, to come before me, in my office in the custom house in this city of New Orleans, on this the 30th day of October, 1845, at the hour of eleven o'clock A. M.; and the said James H. Caldwell being first by me duly sworn on the holy evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in answering the several direct and cross interrogatories to him propounded by the complainants and defendants in said suit, and to said commission annexed, did depose and answer as follows; and his said answers I reduced to writing in his presence, and he signed them in my presence, to wit:

To the 1st interrogatory he answers, his name is James H. Caldwell, aged about fifty-two years, and is a gas engineer at present. He knows George Allan; has known him seventeen years.

To the 2d interrogatory he answers, that George Allan has been engaged in the gas business in the city of New Orleans.

To the 3d interrogatory he answers, he has no knowledge of George Allan loaning money on interest, or of his purchasing notes.

To the 4th interrogatory he answers, that he does not know of George Allan's speculating in property, though he has known of his buying real estate; but cannot say whether it was for the purpose of speculation.

To the 5th interrogatory he answers, that he considers the estate of George Allan to be worth over thirty thousand dollars.

To the 6th interrogatory he answers, he does not know what were the pecuniary circumstances of George Allan on his arrival in the city of New Orleans, or prior to that time.

To the 7th interrogatory he answers, that George Allan is a man of industrious and prudent habits.

To the 8th interrogatory he answers, that he knows that George Allan has, by means of his salary from the New Orleans gas light, which, or great part of which he has saved, for several years had opportunities of making money, and that he has embraced those opportunities. Said Allan was in the employ of deponent seven years before he was employed by the New Orleans Gas Light Company, and that he saved at least three-fourths of his salary.

To the 9th interrogatory he answers, he considers that it is most likely that George Allan would make money by any business or transaction he would engage in. George Allan is an intelligent, prudent man, methodical in all his business, and not likely to be imposed upon.

To the 10th interrogatory he answers, that the character of George Allan for integrity, punctuality, morality, and good faith, is unexceptionable.

To the 11th interrogatory he answers, that he knows of nothing more which can be of any advantage or benefit to either of the parties to said suit, except it is that his confidence in the correct conduct of George Allan is such, that he does not believe that said Allan would consent to become a party to any transaction for the benefit of any person, which would be condemned or reprobated by any principle of law or morality.

JAMES H. CALDWELL.

Sworn, answered, and subscribed to, before me, on this 30th day of October, 1845.

W. J. VASON, [L. S.]

U. S. comm'r in and for eastern dist. of La.

To the 1st cross interrogatory he answers, that he has very particular knowledge of the pecuniary means of George Allan; he has acquired such knowledge by seeing money and property belonging to him.

To the 2d cross interrogatory he answers, that his knowledge of Mr. Allan's pecuniary means and circumstances, is derived from a long knowledge of, and association with, him. Mr. Allan has frequently consulted with deponent upon the propriety of making purchases of

property; and he has seen and knows that Mr. Allan has gradually purchased property, and paid for the same.

To the 3d cross interrogatory he answers, that he knows nothing of the matters inquired of, or referred to, in this question.

To the 4th cross interrogatory he answers, that he never conversed with Mr. Allan about discounting notes. Allan never spoke to deponent about his funds used for that purpose; nor of funds, or other things, supplied by others, or by a friend.

To the 5th cross interrogatory he answers, that Mr. Allan's business is a general gas engineer and fitter. He is an officer of the Gas Light Company. He has been in the employ of said company for more than ten years.

To the 6th cross interrogatory he answers, he does not know what is present amount of Mr. Allan's salary; while deponent was a member of the board of said company, Mr. Allan's salary was from eighteen hundred dollars per annum at first; it was raised to twenty-five hundred dollars per annum.

To the 7th cross interrogatory he answers, that Mr. Allan is a married man, and has two children, and perhaps three by this time. His family resides in New Orleans.

To the 8th cross interrogatory he answers, that he knows of no speculations of Mr. Allan's in real estate. The purchases of real estate which he knows of made by Mr. Allan, he is deriving a revenue from, and were made for purposes of investment. Deponent cannot annex copies of the several purchases of real estate made by Mr. Allan, because he does not deem such are called for by the terms of this interrogatory.

To the 9th cross interrogatory he answers, that during the summer the duties of the office held by Mr. Allan do not require all his time, but that he has considerable leisure. During the winter his occupation is more general. Deponent knows of no other business which Mr. Allan has conducted regularly since his employment of said company.

To the 10th cross interrogatory he answers, that Mr. Allan has embraced all opportunities, within the last ten or twelve years, of investing the savings of his salary in good real estate, which he considered safe and would be profitable. In the year 1833 or 1834, he knows Mr. Allan purchased some real estate in the 2d municipality, situated on Treme street, for which he paid, he thinks, about four thousand dollars; which property Mr. Allan has improved by building three houses thereon, which rent for twelve hundred dollars per annum each. Deponent is not certain as to the locality of the said houses, but thinks that they are situated on Treme or Robertson streets. Five or six years ago, deponent knows that Mr. Allan purchased a lot on Gravier street, below Circus street, in 2d municipality, on which he built a house, which deponent thinks would rent for about six hundred dollars per annum.

About two or three years ago, he knows that Mr. Allan purchased another lot on Gravier street, for which he gave, he thinks, about twenty-five hundred dollars. Deponent also knows, that Mr. Allan con-

sulted with him about purchasing some property from Thomas Banks, situated in Lafayette, in the parish of Jefferson; deponent told him that he thought it would be a good purchase at the price, which he thinks was five thousand dollars; and Mr. Allan afterwards told him that he had purchased the property. Deponent knows that Allan has, from time to time, purchased family negroes, say six or seven, which he now owns; the time when the purchases were made he does not recollect; he thinks that the said negroes are worth at least two thousand dollars or more. Deponent knows that Mr. Allan owns the property above referred to, from the fact that he consulted with deponent about the propriety of making the purchases thereof, and from having seen the title deeds; and the fact of Mr. Allan's purchases of property are notorious, and generally known.

To the 11th cross interrogatory he answers, that he knows nothing more which can be of advantage to the plaintiff.

JAS. H. CALDWELL.

Sworn, answered, and subscribed to, before me, on this 30th day of October, 1845.

W. J. VASON,
U. S. commis'r in and for the E. dist. of La.

In United States circuit court in and for the eastern district of Louisiana:

F. B. CONRAD, assignee of Thomas Banks, complainant, vs. BANKS, FORGAY, et als. } In chancery.

By virtue of the annexed commission to me addressed, issued from the honorable the circuit court of the United States for the eastern district of Louisiana, I have caused Robert Graham, one of the witnesses in said commission named, to come before me in my office in the custom house, in the city of New Orleans, on this the 30th day of October, 1845, at the hour of one o'clock, P. M.; and the said Robert Graham being by me first duly sworn upon the holy evangelist of Almighty God, to speak the truth, the whole truth, and nothing but the truth, in answering the several direct and cross interrogatories to him propounded by the defendants and complainants in said case, and to said commission annexed, did depose and answer as follows; which said answers I reduced to writing in his presence, and he signed them in my presence, to wit:

To the 1st interrogatory he answers, that his name is Robert Graham; that he is about fifty-two years of age; and that he is a slater by profession. He knows George Allan, one of the defendants in this suit, and has known him since the year 1827.

To the 2d interrogatory he answers, that George Allan, when he first knew him in the city of New York, he was engaged in the gas fitting

business. Said Allan has been engaged in the same kind of business ever since deponent has been in this city; that is, since the year 1831.

To the 3d interrogatory he answers, that George Allan has loaned deponent money on interest, in the year 1839, in this city; and deponent has sent persons to Allan for the purpose of getting him to discount or purchase notes, in the year 1842, or 1843.

To the 4th interrogatory he answers, that he knows that Allan has purchased real estate on speculation; deponent has sold and purchased real estate from said Allan.

To the 5th interrogatory he answers, that he knows that said Allan owns real estate, worth at the least twelve thousand dollars, and he considers Mr. Allan to be worth at least twenty-five thousand dollars.

To the 6th interrogatory he answers, that he cannot state what amount of money Mr. Allan had on his arrival in this city. He knows that Mr. Allan had some money in the Savings Bank, in the city of New York, before he left that city, but cannot state how much. He knows that Mr. Allan was a very industrious hard working man in the city of New York; that he was paid so much by the piece by the Gas Company there, and that he worked very hard and very late of a night; and that he saved his money and put it into the bank. He was very saving, so much so as to be thought and called a very stingy man.

To the 7th interrogatory he answers, that George Allan is very industrious and prudent man, and is not of extravagant habits.

To the 8th interrogatory he answers, he knows that Allan has embraced opportunities of making money, besides what he received as his salary from the Gas Light Company. He never let any opportunity of making any thing by speculating pass him. He is always jewing and speculating. To make money by some operation is always in his head. He has known of his speculating in almost every thing by which money could be made. He will let no opportunity of speculating in any thing, from a ten dollar to a twenty-five hundred dollar operation, escape him if he knows of it.

To the 9th interrogatory he answers, that he considers him most likely to make a profit than a loss by speculating. He has been remarkably lucky in his operations, and seems to be always on the right side. He is exceedingly intelligent, prudent, and methodical in his business, and is not likely to make a bad bargain, or to be imposed upon in making a trade.

To the 10th interrogatory he answers, that Mr. Allan's character for integrity, punctuality, morality, and good faith, is very good. He is exceedingly punctual in his engagements, and what he promises one may rely upon most implicitly. He is a real man.

To the 11th interrogatory he answers, that he is not aware that he knows any thing more which can be of any advantage or benefit to either of the parties to this suit, or material to his examination.

ROBERT GRAHAM.

Sworn, answered, and subscribed to, before me, on this 30th day of October, in the year 1845.

W. J. VASON,
U. S. commissioner in and for the eastern district of La.

To the 1st cross interrogatory he answers, that he has very particular knowledge of Mr. Allan's pecuniary means and circumstances; that is, much more so than one has generally of the pecuniary means of a mere acquaintance or friend. Deponent acquired such knowledge from a long acquaintance with, and intimate relation or association with, Mr. Allan. Both are Scotchmen, and have had many business transactions. Mr. Allan has frequently employed deponent to do slating on his houses; from these sources he has derived a pretty correct knowledge of Mr. Allan's pecuniary means.

To the 2d cross interrogatory he answers, that he has stated, in his answer above, all the sources of his knowledge of Mr. Allan's pecuniary means and circumstances.

To the 3d cross interrogatory he answers, that, in 1839, he borrowed of Mr. Allan nine hundred dollars, for three months; and that deponent paid him for the use of that sum, for that period, eighty dollars. Deponent gave him his note, and paid it at maturity. Deponent cannot speak minutely as to time and drawers of notes, which Mr. Allan has purchased from time to time. Deponent has frequently recommended persons, who wished to borrow money, or have notes shaved, to Mr. Allan; but he cannot state whether they got the money or not, of his own knowledge, of Mr. Allan, because he did not see it paid. It was generally known that Mr. Allan had money to loan, and that he did shave notes; but such transactions were not published, and he cannot state the amount thereof.

To the 4th cross interrogatory he answers, that he has frequently conversed with Mr. Allan about discounting notes. He spoke to him about discounting his note aforesaid; never had any conversation with [him] about funds used by him in shaving. Never heard him say that he was supplied by others with funds for that purpose, or any thing of that import or effect. He always spoke of the funds so used as his own.

To the 5th cross interrogatory he answers, that Mr. Allan's business is that of fitter up of gas fixings; and is employed by the Gas Light Company, and has been in their employ for the last twelve or fourteen years; that is, ever since the company was chartered; before that time he was employed by Jas. H. Caldwell, in the gas business.

To the 6th cross interrogatory he answers, that he heard that Allan's salary, at the present time, is eighteen hundred dollars, but that it has been, heretofore, twenty-five hundred dollars; until within the last two years he has understood that it was reduced to eighteen hundred dollars.

To the 7th cross interrogatory he answers, that Mr. Allan is a married man, and has a family of three children, who reside in this city.

To the 8th cross interrogatory he answers, that he has no copy of the

acts of sale or purchase of real estate made by Mr. Allan on speculation. Deponent bought and sold real estate to Mr. Allan; the acts of sale and purchase can be seen in the office of Mr. Pollock, notary public; this deponent has neither in his possession or under his control.

To the 9th cross interrogatory he answers, that Mr. Allan is generally engaged at the office, or superintending the gas fittings of the said company. He has no knowledge of his pursuing any other business regularly.

To the 10th cross interrogatory he answers, that he purchased a lot of ground, situated in Gravier street, near the Charitable Hospital, from Mr. Allan, in 1840, and sold it again to Mr. Allan in 1841, which property Mr. Allan now owns. Deponent has heard of many other transactions of Mr. Allan's speculations, but he cannot state them particularly, as he did not see or witness them; he can only state generally, that Mr. Allan let no opportunity escape him of making money by speculating if he knows of a chance; and he thinks that Mr. Allan is ever on the watch for opportunity to make money, by buying and selling. He appears to think of nothing else but to make money. Mr. Allan has frequently spoken to deponent of his speculations, and in that way he has acquired a knowledge of them, other than those of which he has stated as coming within his own personal observation.

To the 11th cross interrogatory he answers, that he is not acquainted with any other circumstance, which, he is aware of, can be of any advantage to the plaintiff in this suit.

ROBERT GRAHAM.

Sworn to, answered, and subscribed before me, on this 30th day of October, 1845.

W. J. VASON,
U. S. Commissioner in and for the eastern district of Louisiana.

And afterwards, to wit, on the tenth day of November, A. D. 1845, the following agreement was entered into by the solicitors, both of complainant and defendants:

We consent, that C. S. Hunt, United States commissioner, shall take the testimony of R. Seaton, J. H. Caldwell, Stiles Miller, Daniel Clark, J. P. Coulon, J. Kilty Smith, Jas. Patton, G. T. Dunbar, Samuel Jamison, J. A. Beard, and Charles A. Jacobs, in reply to the interrogatories and cross interrogatories propounded to them in the case of F. B. Conrad, assignee of Thomas Banks, vs. Thomas Banks, Forgay, et als., to be used in the United States circuit court.

R. HUNT,
Defendants' solicitor.
BENJAMIN & MICOU,
For the complainant.

NEW ORLEANS, *November 10th*, 1845.

Interrogatories to be propounded to, and answered on oath by, the following witnesses, on the part and behalf of Saml. L. Forgay, of E. W. Wells and his wife, Mrs. Wells, defendants in the above suit; namely, Robert Seaton, J. H. Caldwell, Stiles Miller, Daniel Clark, J. P. Coulon, J. Kilty Smith, Jas. Patton, George T. Dunbar, Samuel Jamieson, Joseph A. Beard, and Charles A. Jacobs:

Interrogatories to be propounded to Robert Seaton.

1st. What is your profession or occupation?

2d. Do you know a double brick house erected at the corner of Nayades and Calliope streets, in the year 1843? If you do, state by whom it was erected; whether or not you were employed to build the same; and, if you were, by whom were you employed; and who paid you for the same.

3d. Were any changes made, during the progress of the work, from the original plan of the building? If such changes were made, state by whom they were ordered.

4th. Was or not Thomas Banks interested in the construction of said house; did he or not pay for same, or for part of the same; did he or not interfere with, control, or give directions respecting, the same; did you or not see him on and about the premises, while the house was in progress of erection?

5th. Was or not E. W. Wells interested in the construction of said house; did he or not pay for the same, or a part of the same; did he give, or did he not give, directions respecting the same?

6th. Did you learn, during the progress of your work in erecting said building, who was to occupy the same? If you did, state how you learned it, and who was to be the tenant.

7th. Do you know of any property, belonging to the defendant, Samuel L. Forgay; what would you suppose him to be worth?

Interrogatories to be propounded to Stiles Miller, Daniel Clark, and J. P. Coulon.

8th. Do you know a double brick house at the corner of Nayades and Calliope streets; have you ever performed any work on the said house and lot? If you have, state what the work was, who employed you to do it, and who paid you for the same.

Interrogatories to be propounded to J. H. Caldwell, Samuel Jamieson, and Geo. T. Dunbar.

9th. Do you know the defendant, Samuel L. Forgay; what is his general character; what is his business or occupation?

10th. Is he or not a man of property; are his business contracts large or small; what do you know of his property and means; is he able to hold and purchase real estate to the amount of fifteen or twenty thousand dollars?

Interrogatories to be propounded to Joseph A. Beard and Charles A. Jacobs.

11th. What is your occupation; are you accustomed to the sale of

real estate, and do you know the manner in which that kind of property is generally bought and sold?

12th. Is it not usual for persons wishing to buy real estate to get others, familiar with the value of such property, to examine it and purchase for them?

13th. Was or not the judgment of Thomas Banks, in regard to the value of real estate, considered, in 1842, as good as that of the generality of real estate brokers in New Orleans? Had he or not been a very large owner of landed property in the city, and dealt largely in such property?

Interrogatories to be answered by J. Kilty Smith and Jas. Patton.

14th. Do you know Thomas Banks; how long have you known him; was he or not in the habit of getting his notes discounted at heavy rates of interest, and selling notes at heavy rates of discount?

15th. What was his manner of doing business; was it methodical, careful, regular; or careless, confused, and without order?

16th. Would you or not consider it a matter of surprise that he could not account for a large portion of his income for several years prior to July, 1842?

Interrogatory to be propounded to each of the above named witnesses.

17th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

R. HUNT,
Defendants' solicitor.

Cross interrogatories to all the witnesses to be examined herein.

1st. Do you know the house and lot referred to in the second interrogatory; who has occupied it from the time it was built to the present time?

2d. The object of this suit is to establish that the said house was built by funds derived directly or indirectly from Thomas Banks, and to make the property liable for his debts. If you, or either of you, know any fact or circumstance whatever tending to show or produce the belief that such is the fact, you are requested and admonished, under your oath, to state and declare such facts or circumstances as fully as if specially interrogated. If you, or either of you, have ever heard T. Banks, S. L. Forgay, or E. W. Wells, speak on this subject, and either state or admit that the funds to build said house came, directly or indirectly, from Thomas Banks, you are admonished fully and particularly to state such admissions or statements, and when and by whom made. Have you or have you not heard such statements of admissions? Do you or do you not know such facts or circumstances?

3d. Have you not reason to believe that said house was built with

funds derived from Thomas Banks, and what are your reasons for the belief?

BENJAMIN & MICOU,
Attorneys.

UNITED STATES OF AMERICA,

Eastern district of Louisiana, city of New Orleans:

F. B. CONRAD, assignee,
vs.
S. L. FORGAY, WELLS, and others.

Be it remembered that, on this 12th day of November, 1845, before me, Copeland S. Hunt, a commissioner duly appointed on the 10th day of November, 1845, by the circuit court of the United States, in and for the fifth judicial circuit and district of Louisiana, under and by virtue of various acts of Congress, personally appeared Robert Seaton, a person of sound mind and lawful age, a witness for the defendants in the above suit, now pending in the circuit court of the United States, for the fifth judicial circuit and district of Louisiana, wherein F. D. Conrad, assignee, is plaintiff, and Samuel L. Forgay, E. W. Wells, and his wife, and als., defendants; and the said Robert Seaton, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 1st interrogatory propounded, witness says: that he is an architect, contractor, and builder.

In answer to the 2d interrogatory, the witness says: that he does know the house described in the question; it was erected by witness himself; that witness was employed by Samuel L. Forgay, and witness was paid by Samuel L. Forgay.

In answer to the 3d interrogatory, the witness says: very few changes were made; there were some additions to the work, but no material change in the plan. The changes were ordered by S. L. Forgay, though Mr. Wells used to consult with Mr. Forgay about them.

In answer to the 4th interrogatory, witness says: Thomas Banks was not, to witness's knowledge, either directly or indirectly interested in the construction of said house. He did not pay for the same, or any part of the same; he did not interfere with, control, or give directions respecting the same. Witness does not recollect exactly whether he saw Thomas Banks on the premises; thinks he saw him there once, while the house was being erected.

In answer to the 5th interrogatory, witness says: that he thinks E. W. Wells was interested in the arrangement of the house; he used to talk to witness about it, saying that he was going to occupy it. E. W. Wells did not pay for any part of the house. Witness received all the funds from Mr. Forgay. E. W. Wells gave directions about the con-

veniences of the house. He gave no orders, but used to consult with Mr. Forgay and witness about the conveniences of the house.

In answer to the 6th interrogatory, witness says: witness learned, during the progress of the building, that it was to be occupied by E. W. Wells, both from Mr. Forgay and Mr. Wells.

In answer to the 7th interrogatory, witness says: that he knows several pieces of property belonging to S. L. Forgay, and, judging from his property and his business, supposes he is worth fifty thousand dollars.

In answer to the 17th interrogatory, witness says: he can only state, that from all the circumstances about the matter, it seemed to witness that Mr. Wells was to be the tenant of a house built by Mr. Forgay on a plan to suit Mr. Wells. This was after mentioned to witness by Mr. Forgay, who would say, give Mr. Wells his way about the house as much as possible without injuring it, if he should have to rent it to others.

In answer to the 1st cross interrogatory, witness says: that witness does know the house and lot referred as he has stated before. Mr. Wells has occupied it ever since it was built to the present time.

In answer to the 2d cross interrogatory, witness says: that he does not know, and has no reason to believe, that the said house was built by funds derived from Thomas Banks directly or indirectly; witness never heard Mr. Banks say anything on the subject; witness has heard both Mr. Wells and Mr. Forgay say that Mr. Banks had furnished no funds for the building of the house; witness does not know such facts; has not heard such statements of admission.

In answer to the 3d interrogatory, witness says: witness has no such belief, and consequently no reasons for such belief.

ROBERT SEATON.

Sworn and subscribed before me, this 12th day of November, 1845.

C. S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, duly appointed commissioner by the circuit court of the United States for the fifth judicial circuit and district of Louisiana, do hereby certify that, on the 12th day of November, 1845, I was attended by the witness, Robert Seaton, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing and forwarding the same with my own hand to the court for which the same was taken. I further certify, that I am not of counsel or attorney of the parties in said deposition, or in any way interested in this cause.

In testimony whereof I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Deposition of James H. Caldwell, esq.

And now, again, on this 21st day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared James H. Caldwell, esq., a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells and wife, et als.; and the said James H. Caldwell, being by me first carefully cautioned, and examined, and sworn to testify the whole truth, and nothing but the truth, to the interrogatory and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say—

In answer to the 9th interrogatory: witness knows the defendant, Samuel L. Forgay; his general character is that of an honest, industrious, and honorable man, and he is a paving contractor.

In answer to the 10th interrogatory: witness knows that S. L. Forgay owns houses and lots in the city, and slaves; that he is a man of property, and his business contracts are large; that he is able to hold real property to the amount of fifteen or twenty thousand dollars.

In answer to the 17th interrogatory: witness can state nothing further than he has already stated.

In answer to the 1st cross interrogatory: witness knows the house and lot referred to; witness does not know who has occupied it since it was built to the present time.

In answer to the 2d cross interrogatory: witness does not believe that S. L. Forgay derived any funds for building said house from Thomas Banks; witness has never heard any conversation on the subject of Thomas Banks furnishing funds for said house from any person; witness has never heard such statements of admissions, and witness does not know any such facts or circumstances as are referred to in the question.

In answer to the 3d cross interrogatory: witness has no knowledge of the subject referred to in the question.

JAMES H. CALDWELL.

Sworn to and subscribed, before me, November 21st, 1845, at New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, commissioner as aforesaid, do hereby certify, that I was attended by the witness on the 21st November, 1845; that the said witness is of sound mind and lawful age; and the witness was by me first carefully examined, and cautioned, and sworn to testify the whole truth; and the deposition was by me reduced to writing in the presence of the witness alone and separate, without the presence of any other person; and after carefully reading the same to the witness, he

subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same was taken. I further certify, that I am not of counsel for either of the parties to this deposition, nor in any way interested in the same.

[L. S.] In testimony whereof I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Deposition of Stiles Miller.

And now, again, on this 14th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared Stiles Miller, esq., a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells and his wife, et als. And the said Stiles Miller being by me first carefully examined, and cautioned, and sworn, to testify the whole truth, and nothing but the truth, to the interrogatory and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 8th interrogatory. That he knows the brick house described in the question; witness has built a brick cistern for said house; he was employed by Samuel L. Forgay, who paid him for the work.

In answer to the 17th interrogatory. Witness knows nothing more than he has already stated in answer to the question first put to him.

In answer to the 1st cross interrogatory. Witness knows the house and lot referred to in the question. He has not been in the house for four, five, or six months. Mr. Wells then occupied it, and does yet, to the best of witness's knowledge.

In answer to the 2d cross interrogatory. That witness knows nothing of any such facts or circumstances referred to in the question. Witness never heard Thomas Banks, E. W. Wells, or S. L. Forgay speak on the subject, and witness has never heard such statements of admission from them, or any other person, and witness does not know any such facts or *or* circumstances.

In answer to the 3d cross interrogatory. That witness has no reason to believe that the house was built with funds derived from Thomas Banks.

STILES MILLER.

Sworn to and subscribed before me, this 14th day of November, 1845, at New Orleans.

COPELAND S. HUNT,
U. S. commissioner.

I, Copeland S. Hunt, duly appointed commissioner aforesaid, do hereby certify, that on the 14th day of November, 1845, I was attended by the witness, Stiles Miller, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced

to writing in the presence of the witness, alone and separate, without the presence of any other person; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties to this deposition, or in any way interested in this cause.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. commissioner.

Deposition of Daniel Clark.

And now again, on this 13th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared Daniel Clark, a person of sound mind and of lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife et als.; and the said Daniel Clark being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 8th interrogatory. That he does not know the brick house described in the question; witness did the flagging in the yard of said house, S. L. Forgay paid witness for the work, Mr. S. L. Forgay employed witness.

In answer to the 17th interrogatory. Witness knows nothing further. He has always heard the property spoken of as Mr. Forgay's. Mr. Forgay employed witness and paid him.

In answer to the 1st cross interrogatory. That witness knows the house, he does not know who now occupies it. Knows Mr. Wells occupied it two years ago.

In answer to the 2d cross interrogatory. That witness knows nothing about the title to the property, and does not know from what source the funds for building it came. Witness never heard any statements about the property, except from Mr. Forgay, and he stated that the property belonged to him. Witness has heard no statement except what he has stated.

In answer to the 3d cross interrogatory. That witness has no reason to believe that the house was built by funds derived from Thomas Banks, because Mr. Forgay has told witness that the house was built by him, and that he was owner of the property.

DANIEL S. CLARK.

Sworn to and subscribed before me, United States commissioner, New Orleans, November 13th, 1845.

COPELAND S. HUNT.

I, Copeland S. Hunt, duly appointed commissioner as aforesaid, do hereby certify, that on the 13th day of November, 1845, I was attended by the witness, Daniel S. Clark, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties to this deposition, nor in any way interested in this cause.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. commissioner.

Deposition of J. P. Coulon.

And now, again, on this 13th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared J. P. Coulon, a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife, and als.; and the said J. P. Coulon being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, and without the presence of any other person, did depose and say—

In answer to the 8th interrogatory. That he knows the house at the corner of Nayades and Calliope streets. Mr. Forgay and Mr. Jacobs jointly made application to the witness to introduce the water from the water works into the yard of said house, and of 4 other houses on Calliope street, belonging to Mr. Jacobs. Mr. Jacobs paid witness four-fifths of the same contracted for, and Mr. Forgay paid one-fifth.

In answer to the 17th interrogatory. That witness cannot state any thing further in relation to the subject of the examination. Witness never saw the parties as to any matter of business after this work was completed.

In answer to the 1st cross interrogatory. Witness knows the house and lot referred to in the question. Mr. Wells, witness believes, has occupied it since it was built to the present time.

In answer to the 2d cross interrogatory. Witness has no knowledge of any fact or circumstance tending to produce the belief that the funds for building said house were derived, either directly or indirectly, from Thomas Banks. Witness has never heard such statements and admissions from Tho. Banks, or S. L. Forgay, or E. W. Wells, or any body else. Witness has never heard any such statements and admissions. Witness does not know such facts and circumstances.

In answer to the 3d cross interrogatory. Witness has no reason for the belief that said house was built with funds derived from Thomas Banks.

JOSEPH P. COULON.

Sworn to and subscribed before me, New Orleans, November 13th, 1845.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, duly appointed commissioner as aforesaid, do hereby certify, that, on the 13th day of November, 1845, I was attended by the witness, Joseph P. Coulon, who is of sound mind and lawful age; and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties in said deposition, or in any way interested in this cause.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Deposition of J. Kilty Smith.

And now, again, on this 17th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared J. Kilty Smith, esq., a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and als.; and the said J. Kilty Smith, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories, without the presence of any other person, did depose and say—

In answer to the 14th interrogatory. That witness has known Thomas Banks for many years. Thomas Banks was in the habit of getting his notes discounted at heavy rates of interest, and of selling notes at heavy rates of discount, until more recently, after his credit was gone.

In answer to the 15th interrogatory. Thomas Banks' manner of doing business was careless, irregular, confused, and without order.

In answer to the 16th interrogatory. From my belief that Thomas Banks kept no regular books or accounts, witness would think that Thomas Banks could not account for his receipts and expenditures.

In answer to the 17th interrogatory. Witness knows nothing further in regard to the subjects in dispute.

In answer to the 1st cross interrogatory. Witness knows nothing about

the matter, except that the house has been pointed out to him from the Lafayette car.

In answer to the 2d cross interrogatory. Witness has never heard any thing on the subject, and knows nothing about it.

In answer to the 3d cross interrogatory. Witness knows nothing about where the funds to build the house came from.

J. KILTY SMITH.

Sworn to and subscribed before me, November 17th, 1845, New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, commissioner as aforesaid, do hereby certify, that, on the 17th Nov., 1845, I was attended by the witness, J. Kilty Smith, esq., who is of sound mind and lawful age; and the witness was by me first carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel for either of the parties to this deposition, nor in any way interested in the same.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Testimony of James Patton.

And now, again, on this 15th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared James Patton, esq., a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife, and als.; the said James Patton being first by me carefully examined, cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say—

In answer to the 14th interrogatory. That witness has known Thomas Banks thirteen years. Thomas Banks was in the habit of getting his notes discounted at heavy rates of interest, and selling his notes at heavy rates of discount.

In answer to the 15th interrogatory. Thomas Banks did his business in a careless, irregular, and disorderly manner.

In answer to the sixteenth interrogatory. That witness should not have been surprised if Thomas Banks could not have accounted for a vast deal of his income.

In answer to the 17th interrogatory. Witness and Thomas Banks had,

in the course of the last ten years, vast transactions in money matters with each other. Witness once owed ten thousand dollars to Thomas Banks, and Mr. Banks did not know it till informed by witness. Witness mentions this fact to show Mr. Banks' extreme carelessness. Mr. Banks frequently came into witness' office with his notes carelessly crammed in his hat. Mr. Banks would throw the notes to witness without counting them, and request witness to get them cashed. The witness will mention, as another instance of Mr. Banks' carelessness in the transaction of business—Thomas Banks having one day come into the office of witness, witness asked him to endorse a small note. Mr. Banks said, certainly; and Mr. Banks being in a hurry, wished to endorse a blank piece of paper. But the witness having commenced to write the note, filled it up for twenty thousand dollars, at sixty days after date, which Mr. Banks endorsed without reading, and was in the act of leaving the office, when witness called on him to come back and read the note, which he did, and then remarked, do you call this a small note? Witness told him no; that witness had only drawn it so to show him, Mr. Banks, how culpably careless he was. Witness then made out the note for five thousand dollars, and finally Mr. Banks handed over to witness the whole sum that witness wanted—say one thousand dollars—from his pocket. Witness knows nothing particularly about this suit.

In answer to the 1st cross interrogatory. Witness knows that there is a brick house, such as is referred to in the question, occupied by whom witness does not know.

In answer to the 2d cross interrogatory. Witness has no knowledge of the subject matters of this interrogatory.

In answer to the 3d cross interrogatory. Witness answers as to the 2d cross interrogatory, that he knows nothing whatever.

JAMES PATTON.

Sworn and subscribed to before me, November 15th, 1845, New Orleans.

COPELAND S. HUNT.

I, Copeland S. Hunt, commissioner as aforesaid, do hereby certify that, on the 15th day of November, 1845, I was attended by the witness, James Patton, esq., who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same was taken. I further testify, that I am not of counsel for either of the parties to this deposition, nor in any way interested in this cause.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Testimony of George T. Dunbar.

And now, again, on this 14th day of November, 1845, before me, Copeland S. Hunt, commissioner as aforesaid, personally appeared George T. Dunbar, a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife, and als.; and the said George T. Dunbar, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 9th interrogatory, that witness knows the defendant, Samuel L. Forgay; he bears an unblemished reputation; his business is paving; he is a large contractor for the municipality No. 2.

In answer to the 10th interrogatory, that Samuel L. Forgay, to witness's knowledge, owns some eight or ten lots in the municipality No. 2; Mr. Forgay's contracts are very heavy; he has now contracts with the municipality No. 2, amounting to at least seventy-five thousand dollars; witness thinks that Mr. Forgay is well able to hold and purchase real estate to the value of fifteen or twenty thousand dollars; his, Forgay's, business is such that his capital must be large to carry it on, as he is paid in notes of from one, two, three, and four years; very little of his business is cash business.

In answer to the 17th interrogatory, that witness knows nothing further about the matter, as to which this question refers, than he has already stated.

In answer to the 1st cross interrogatory, that, as the second interrogatory was not addressed to the witness, he cannot answer this question with propriety. Witness knows the house in which Mr. Wells lives, and has always heard it belonged to Mr. Forgay.

In answer to the 2d cross interrogatory, that witness has no knowledge at all about the matters referred to in the question; witness never heard any such admissions or statements as those about which he is questioned; has never heard, and does not know, any thing on the subject.

In answer to the 3d cross interrogatory, witness has no reason to believe that Thomas Banks furnished funds for building the house in which Mr. Wells lives.

GEO. T. DUNBAR.

Sworn to and subscribed before me, November 14, 1845, New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, duly appointed commissioner as aforesaid, do hereby certify, that on the 14th day of November, 1845, I was attended by the witness, George T. Dunbar, esq., who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties to this deposition, nor in any way interested in this cause.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Deposition of Samuel Jamieson.

And now again, on this 17th day of November, 1845, before me, Copeland S. Hunt, commissioner as aforesaid, personally appeared Samuel Jamieson, a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife, et als.; and the said Samuel Jamieson, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 9th interrogatory, witness knows the defendant, Samuel Forgay; his general character is good; he is a large contractor for paving the streets.

In answer to the 10th interrogatory, witness would judge Mr. Forgay to be a man of property. He has for some time supposed that he controlled from fifty to seventy-five thousand dollars. His contracts are, witness believes, for a long time. Witness believes that his payments on his (Forgay's) contracts fall due from the municipality in from one to six years. Witness is on one of Mr. Forgay's bonds to the second municipality for twenty thousand dollars. Witness thinks Mr. Forgay must be able to hold real estate to the amount of fifteen or twenty thousand dollars.

In answer to 17th interrogatory, witness knows nothing further than he has stated. Mr. Forgay always seems to have plenty of money; witness has often borrowed a thousand dollars from him.

In answer to the 1st cross interrogatory, witness knows the house; he believes E. W. Wells now lives [in] it; does not know who formerly occupied it.

In answer to the 2d cross interrogatory, witness knows nothing further on the subject, but that Mr. Forgay told witness that he had contracted with Mr. Seaton to build the house at the corner of Nayades

and Calliope streets. Witness has heard or knows nothing further about the matters in the question

In answer to the 3d cross interrogatory, witness has no reason for such belief.

SAMUEL JAMIESON.

Sworn and subscribed before me, 17th November, 1845, New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, do hereby certify, that on the 17th November, 1845, I was attended by the witness, Samuel Jamieson, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed it in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for whom the same was taken. I further certify, that I am not of counsel for either of the parties to this deposition, nor in any way interested in the same.

In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

Deposition of Joseph A. Beard.

And now again, on this 24th day of November, 1845, before me, Copeland S. Hunt, a commissioner as aforesaid, personally appeared Joseph A. Beard, a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells, and his wife, et als.; and the said Joseph A. Beard, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatories and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 11th interrogatory, witness is an auctioneer and real estate broker; witness is accustomed to the sale of real estate; such sales are generally made at public auction, or through a broker at private sale.

In answer to the 12th interrogatory, private purchases are frequently made through a third person familiar with the value of property.

In answer to the 13th interrogatory witness says, that he considers the judgment of Thomas Banks superior to most persons in New Orleans at the time designated, before or since. To the latter part of said question witness answers yes.

In answer to the 17th interrogatory witness can state nothing further that he knows of.

In answer to the 1st cross interrogatory, witness knows the house and lot referred to; E. W. Wells and family have occupied it since it was built.

In answer to the 2d cross interrogatory, witness was not privy to the purchase or sale of that property, and knows nothing about it; witness has never heard any conversations about the house from any of the parties; witness has heard some gossip out of doors on the subject, but no statement of any of the parties; witness has no knowledge of such facts or circumstances referred to in the question.

In answer to the 3d cross interrogatory witness has no knowledge of the building, or the contract for building, or of the purchase of the house or lot in question.

J. A. BEARD.

Sworn to and subscribed, before me, this 24th November, 1845, [at] New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, commissioner as aforesaid, do hereby certify, that, on the 24th day of November, 1845, I was attended by the witness Jos. A. Beard, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, and directing, and forwarding the same to the court for which the same was taken.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal.

COPELAND. S. HUNT,
U. S. Commissioner.

Deposition of Charles A. Jacobs, esq.

And now again, on the 24th day of November, 1845, before me, Copeland S. Hunt, commissioner as aforesaid, personally appeared Charles A. Jacobs, esq., a person of sound mind and lawful age, a witness for the defendants in the suit of F. Conrad, assignee, vs. S. L. Forgay, E. W. Wells and his wife, and als.; and the said Charles A. Jacobs being by me first carefully examined, and cautioned, and sworn to testify the whole truth, and nothing but the truth, to the interrogatory and cross interrogatories propounded to him, alone and separate, without the presence of any other person, did depose and say:

In answer to the 11th interrogatory, that witness' occupation is that of a merchant; that witness has, in the course of his life, *has* bought and sold real property to a large amount. The sales of real property, like the sales of any other commodity, are sometimes for cash and sometimes for credit; sometimes for cash in part and credit in part; the acts of sale are usually passed before notaries.

In answer to the 12th interrogatory, that it is sometimes the case, not always, that persons about to buy real estate employ brokers.

In answer to the 13th interrogatory, witness thinks the judgment of Thomas Banks was considered in 1842 as good as that of the generality of real estate brokers. Thomas Banks had been a large owner of real estate, and dealt largely in such property.

In answer to the 17th interrogatory, witness can state nothing further than that Mr. Forgay built the house at the corner of Nayades and Calliope street, and that Mr. Banks was often there, apparently superintending or looking on; witness did not know Thomas Banks' business there.

In answer to the 1st cross interrogatory, witness knows the house and lot referred to in the question; he thinks Mr. Wells and his family have occupied said house since it was built.

In answer to the 2d cross interrogatory, witness knows nothing as to Thomas Banks having furnished, directly or indirectly, funds for the building of said house, never having heard any of the parties speak on the subject; witness has never heard such statement of admissions, and does not know such facts or circumstances; witness may have his suspicions, but has no ground for stating them; does not know positively any thing on the subject.

In answer to the 3d cross interrogatory, witness can only state, in answer to this interrogatory, what he stated in his last answer.

CHARLES A. JACOBS.

Sworn to and subscribed, before me, this 24th November, 1845, [at] New Orleans.

COPELAND S. HUNT,
U. S. Commissioner.

I, Copeland S. Hunt, duly appointed commissioner as aforesaid, do hereby certify, that on the 25th day of November, 1845, I was attended by the witness, Charles A. Jacobs, esq., and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, alone and separate, without the presence of any other person; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken. I further certify, that I am not of counsel or attorney to either of the parties to this deposition, nor in any way interested in this cause.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal.

COPELAND S. HUNT,
U. S. Commissioner.

STATE OF LOUISIANA,
First judicial district court.

CITY BANK OF NEW ORLEANS, vs. THOMAS BANKS and others. } No. 22,888—petition filed, 21st Nov. 1843.

To the honorable the district court, for the first judicial district of Louisiana:

The petition of the City Bank of New Orleans, a copy corporate under the law, and domiciliated in said city, respectfully shews, that on or about the 30th June, 1837, your petitioner loaned to Thomas Banks and Charlotte Foggarty, his wife, residing in New Orleans, the sum of forty-five thousand dollars; in acknowledgment whereof the said Banks and wife executed and delivered to petitioner their certain bond or obligation, promising in solido to pay the said amount to petitioner in twelve months from the aforesaid date of said loan; and to secure the said payment, the said Banks and wife, on the day aforesaid, by act before H. B. Cenas, esq., notary public, granted to petitioner a special mortgage upon certain valuable real estate in said city, particularly described in said act, and commonly known as "*Banks' Arcade;*" and in said act, amongst other stipulations, the said Banks and wife agreed to pay interest for said loan at the rate of eight per cent. per annum; all of which will more fully appear by reference to the said bond and mortgage, copies of which are annexed for reference; and upon the said loan such payments only have been made as to reduce the amount due to the sum of forty-four thousand dollars, besides interest at 8 p. c. per annum, from the 30th June, 1842, until paid, and costs of protest; of which balance, payment has been demanded of said parties and refused. Petitioner further sheweth, that on or about the 30th day of July, 1842, the said Thomas Banks made the application to be decreed a bankrupt to the United States district court for the eastern district of Louisiana; that he was so decreed, and afterwards such proceedings were had in the premises, that he was discharged in said court, and received his certificate of such discharge; but your petitioner avers, that in obtaining said discharge, the said Thomas Banks was guilty of fraud, and wilful concealment of his property, and rights of property, contrary to the provisions of said act; and your petitioner has given notice that the said certificate of said defendant, if the same is pleaded in bar of this suit, will be impeached, for the grounds herein set forth, to wit:

1st. That a short time preceding the said application, the said Banks made simulated transfers of his property, by certain deeds of acknowledgment and donation, hereinafter more particularly specified, in favor of Edmund W. Wells and Ann Foggarty, his wife; also the niece of Mrs. Charlotte Banks.

2d. That within nine months preceding his said application, the said Banks made large sales of real and personal estate to divers persons, among whom are John Thompson, Victor Beque, Wm. Whitla, George

Allan, Wm. Robinson, (f. m. c.) F. B. Conrad, and others; for which he received in cash and negotiable promissory notes, payable to him or his order, the sum of forty thousand dollars and upwards.

3d. That the annual income of said Banks, arising from his real estate, amounted, for several years preceding his failure, to the sum of from one hundred thousand to seventy-five thousand; and that in the year preceding his said application, he received for the rents of his real estate the sum of seventy-five thousand dollars or upwards.

4th. That at the date of his said application a great part of his said property was under leases, to expire on or about the 1st day of November, then next succeeding; and that said Banks had received from his tenants promissory notes to himself, or order, payable and falling due on or after the date of his said petition in bankruptcy, to the further amount of twenty thousand dollars and upwards.

5th. That within the year preceding the said application, the said Thomas Banks, well knowing the disordered and embarrassed condition of his affairs, and during the whole period intending and contemplating to take the benefit of the bankrupt laws of the United States, executed divers long leases in favor of sundry persons, and especially in favor of J. S. Pritchard, Norman Steele & Co., J. Alloy, J. Francisco, Mitchell & Philips, J. Hewlett, W. H. Whitmarsh, and A. W. Haines, to the most valuable part of his real estate, which leases were made for respective terms of two, three, four, and five years, all expiring long after the intended date of his petition in bankruptcy; and, in consideration of which, he received from said several leases, promissory notes, payable to him or his order, for the entire term of said respective leases, and amounting in the whole to the sum of seventy-five thousand dollars and upwards.

6th. That for the year preceding the petition in bankruptcy of said defendant, and notwithstanding the said large receipts in cash and promissory notes, amounting in all to the sum of two hundred thousand dollars, the said Thomas Banks paid no part of either the principal or interest of his debts; that in his said bankruptcy he surrendered no part of the cash and promissory notes received by him as aforesaid, and your petitioner therefore charges, that the said cash and notes, and the proceeds thereof, were concealed by said Banks.

And petitioner further alleges, that notwithstanding the said bankruptcy of said defendant, and ever since the filing of his said petition, he has remained in the enjoyment of real and personal estate to a considerable amount, and that he is now the owner thereof, although the title to the same is nominally vested in other persons; and among the properties so held, and which petitioner alleges still to belong to said defendant, are the following:

1st. A lot, with improvements thereon, situated in the second municipality of New Orleans, in the square bounded by Robertson, Jackson, Villere, and Common streets, having a front of 30 feet on Jackson street by 100 feet deep; which property the said Banks acknowledged, by act before J. B. Marks, not. public, of date 29th March, 1842, to belong to said Edward W. Wells, and to have been purchased with his

funds, although the title to the same had before that time stood only in the name of said Banks.

2d. Two lots of ground, with improvements thereon, situated in the same municipality, in suberb Saulet, in the square bounded by Nayades, Clio, Prytania, and Calliope streets; No. 1 forming the corner of Nayades and Calliope streets, and measures 26 feet 7 inches and 5 lines front on Nayades street, by a depth of 120 feet on Calliope streets; No. 2 adjoining the above, fronting on Nayades street, and having equal dimensions with No. 1; also certain slaves—Maria, aged about 43 years; Ben, aged 32 years; Mary, a griffone, aged about 29 years; which real estate and slaves were conveyed by the said Banks, by an act of donation, of date May 2d, 1842, passed before J. B. Marks, notary public, in favor of the said Ann Foggarty, wife of said Wells, and niece of said Mrs. Charlotte Banks; and by act, before Wm. Christy, not. public, of date 17th July, 1843, the said Ann Foggarty, wife of said Wells, passed an act of sale of the said property, to wit, the said lands and slaves, to one Samuel Lindsley Forgay, of New Orleans, for the nominal consideration of $4,500; but your petitioner charges, that notwithstanding the said conveyances, the said property still belongs to said Banks, and is held by said Forgay for the use of said Banks.

3d. A certain lot of ground, with buildings and improvements, in the same municipality, situated in fauxbourg Delord, comprised between St. Paul, Girod, St. Peter, and Julia streets, and measuring 85 feet front on St. Paul street, by 129 feet 6 inches deep, being the same conveyed by said Banks to one William Robinson, f. m. c., also of New Orleans, by act before J. B. Marks, N. P., on the 16 May, 1842, for the nominal consideration of $10,000, but really held by said Robinson for the use and benefit of said Banks.

4th. Two lots of ground in the same municipality and suburb with the last, with the buildings and improvements thereon, being the same designated as the Nos. 329 and 330, on a plan of R. Delafield, dated in March, 1832, and deposited in the office of G. R. Stringer, N. P., (now F. Grima, esq.) Said lots join each other, and measure together about 85 feet front on Covington landing, 27 feet front on Pensacola landing, by 196 feet deep, and about 50 feet wide in the rear. The said property being the same conveyed by act before J. B. Marks, of date 24 May, 1842, from said Banks to one William Whitla, also of New Orleans, for the nominal consideration of $7,000, but really held by him for the said Banks.

5th. Two certain lots of ground, situated on the batture in front of suburb Livaudais, in the parish of Jefferson, designated by the letters A C and A D, on the original plan of said suburb, deposited in the office of G. R. Stringer, (now F. Grima,) being part of the square comprised between Washington, Sixth, Levee, and New Levee streets; said lots having each, in English measure, 46 feet front on Levee street, between Washington and Sixth streets, and have, in front to the river, each 44 feet 9 inches and 5 lines. The depth of said lot "A C," from Levee street to the river, being 215 feet, and of lot "A D," about an

equal depth, together with all the rights of batture or alluvion belonging to said lots, which property was conveyed by said Banks to one George Allan, by act before J. B. Marks, notary public, on the 1 June, 1842, for the nominal consideration of $10,000, but is really held by said purchaser for the use of said Banks.

6th. A certain lot of ground in suburb Lacourse, of the said second municipality, together with all the buildings and improvements thereon, designated as No. 1 on a plan drawn by A. D'Hemecourt, dated 6th May, 1835, and deposited in the office of H. B. Cenas, notary public. Said lot measuring about 32 feet front on Magazine street, by 127 feet deep, between parallel lines, and front on Edward street, which lot was conveyed by the Commercial Bank of New Orleans to the said George Allan, by act before H. B. Cenas, notary public, on the 20th October, 1842, for the price of $1,550 cash; and petitioner avers that said lot was really purchased by the money of, and belongs to, the said Thomas Banks, though held in the name of said Allan.

7th. Seven lots of ground in the said municipality, and in suburb , designated as Nos. 126, 150, 151, 152, 153, 154, and 269, on a plan drawn by W. T. Thompson, surveyor, dated 6 January, 1843, deposited in the office of J. B. Marks, notary public. Lot No. 126, measuring 26 feet front, on Julia street landing, 106 feet deep on the side next to St. John street, and 79 feet on the side next to Circus street. Lots Nos. 150, 151, 152, 153, 154, measure each about 26 feet front on Julia street landing, by 85 feet deep, between parallel lines. Lot No. 154, forming the corner of Julia street landing and St. Paul street, and lot No. 269 forms the corner of Florida landing, by 120 feet deep; the said property having been sold by F. B. Conrad, esq., assignee in bankruptcy of the estate of Thomas Banks, to J. B. Marks, by act before William Christy, N. P., for the sum of $3,020 cash; but, as petitioner charges, paid for by the said Marks, with the money of said Banks, and held for his use.

8th. Certain lots in the village of Carrollton and Greenville, of which a more particular description will be hereafter filed; 20 shares Merchants' Insurance Co. stock; a pew in Christ church, and certain articles of household furniture, and a barouche, all purchased of said assignee by the said J. B. Marks, but in fact paid for with the money of said Banks, and held for his use.

And petitioner charges that all the property herein above described, under the numbers from one to eight inclusive, have been, since the bankruptcy of the said Thomas Banks, and still are, in the use and occupation, and enjoyment, and under the control of the said Thomas Banks, and that he has made large and extensive improvements on the same; that the said properties belong to the foregoing. The said Thomas Banks owns other properties, and has bought and sold real estate to a large amount since his said bankruptcy.

Petitioner therefore prays, that said Thomas Banks, and Charlotte Fogarty, his wife, be cited to appear and answer this petition; that they be condemned in solido to pay to petitioner the said sum of forty-four

thousand dollars, with interest at 8 per cent. per annum, from the 30th June, 1842, until paid, and with the rank and privilege of special mortgages upon the property known as Banks' Arcade, and particularly described in said act of mortgage, of which an authentic copy is annexed, passed as aforesaid, on the day aforesaid, by H. B. Cenas, notary public. Petitioners further pray, that the said Edmund W. Wells, and Ann Fogarty, his wife, the said Samuel L. Forgay, William Robinson, f. m. c., William Whitla, George Allan, and Joseph Benzaken Marks, all of New Orleans, be cited to appear and answer this petition; that the properties herein above described and held as aforesaid, in their respective names, be decreed to belong to the said Thomas Banks and wife, and liable to the judgment and execution which shall be rendered against them in this case. And petitioners pray for general relief in the premises.

(Signed) LOCKETT & MICOU, *Att'ys.*

Exceptions and answers of T. Banks, filed 12th December, 1843.

CITY BANK OF NEW ORLEANS vs. THOMAS BANKS and others. } No. 22,888.

In the district court.—Thomas Banks, one of the defendants in the above entitled suit, now comes into court, by his attorney; and, for his exceptions and answer to the plaintiffs petition, says that the said plaintiff cannot have and maintain the present action against this respondent, for the following reasons, to wit:

1st. Because this respondent has applied for and obtained the benefit of an act of the Congress of the United States of America, entitled "an act to establish an uniform system of bankruptcy throughout the United States, approved 19th August, 1841." That an assignee has been duly appointed under said law, who represents all the creditors of this respondent, and who alone can prosecute an action like the present before the United States district court for the eastern district of the State of Louisiana, sitting in bankruptcy. That therefore the present plaintiff has no right to institute said action, nor can this honorable court entertain jurisdiction thereof.

2d. Because the judgment of discharge, and certificate thereof, having been duly granted to this respondent by said United States district court, sitting in bankruptcy, operates as a full and complete discharge from all debts, contracts, and other engagements provable under said bankrupt law; which judgment of discharge and certificate is now specially plead in bar as a peremptory exception to the present action. And this respondent further avers and contends, that this honorable court cannot entertain jurisdiction either to enquire into the validity of said judgment of discharge and certificate, or pretended acts of fraud and concealment, by which the plaintiff was a party to the proceedings in bankruptcy, and is bound by the judgment of discharge therein rendered.

Wherefore this respondent respectfully prays that the plaintiff's petition be dismissed, with costs.

And in case the court should be of opinion that the foregoing exceptions ought to be overruled, then this respondent, answering to the merits, says, that he denies all and singular the allegations in said petition contained, and he expressly avers that all the charges of fraud and concealment set forth in said petition are false and slanderous; that the prosecution of the present action is malicious, and this respondent reserves to himself the right to institute his action in damages against the plaintiff for said malicious prosecution. Wherefore this respondent respectfully prays to be hence dismissed, with costs; and he prays for all such other and further aid, and relief, and remedy, as the nature of his case may require, and the law will permit; and he will ever pray, &c., &c.

(Signed) C. ROSELIUS, *For defendant.*

Testimony filed 11*th March*, 1844.

John B. Steele, witness for plaintiff, sworn, is tenant of Thomas Banks; the act of lease was passed and signed before Marks, notary; has paid two of the notes given for the lease of the premises, amounting together to $900, due 1st February and 1st May, 1843, both endorsed Thomas Banks and George Allan; they paid a portion of the note due in August, 1843, about $90, he thinks; witness has business with the banks of this city. It is customary for the banks to mark the notes discounted with red ink, and those deposited for collection with black. The two notes produced by him are marked with black ink; thinks the note on which he paid $90, was presented from the Bank of Louisiana, they made a calculation that $90 was due Banks on the note, and they paid that amount to the notary; none of the other notes described in the act of lease falling due after 1843, have been presented for payment to witness or his firm of Norman, Steele & Co.; the firm has been dissolved since July, 1843, and witness has been charged with the liquidation; he has made efforts to discover in whose hands the other notes were; he offered a reward through the newspapers to any one that could give him information of where the notes were; he never applied to the banks to know where the notes were. Some of the notes have fallen due since August, 1843; they obtained no information in reply to the advertisement of reward as to the whereabouts of the notes.

Cross examination.

The note on which $90 was paid was protested for the balance; witness paid rent to Banks up to the time of the sale of the property by the assignee to the Union Bank of Louisiana. They did not pay Banks any more rent, because of the sale which divested him of the property; they have paid no rent to any person since; they sued Banks or his assignee and Commagere in this court, and issued a writ of sequestration for the notes; they had been informed the notes were in the Bank of Louisiana, but the sheriff could not find them when the writ issued. No suit was ever brought against them for the balance due in August.

Re-examined.

Knows that Commagere is a clerk of Marks, notary.

A. Meynier, witness for plaintiff, is a deputy sheriff of this court; was charged with the execution of a writ against one Priscilla Griffin, f. w. c., who lived in a house fronting the new basin; went to the house for the purpose of executing the writ; when witness went into the house, Mr. Thomas Banks came in a few minutes afterwards. The defendant in the execution said, she had no money and no property. Mr. Banks made himself busy in the matter, and witness was about telling him to leave the house, that he might do his duty, when he was informed that he, Banks, had some business with Mrs. Griffin; witness was determined to seize the furniture, when Mr. Simms came in and said, if he would seize the furniture and leave it in the house, he, Simms, would be security for its forthcoming at the sale. Witness told them he must take an inventory of the things in the house, and Mrs. Griffin and others objected to it. Mr. Haynes, lawyer, was there, and a free man of color, named Robinson, was present at the time. Witness proceeded to make the inventory, and the first thing which attracted his attention was an armoir, which they refused, though repeatedly requested, to open; witness's attention was also attracted by Mrs. Griffin sending her servant up stairs with a key, as he supposed to open this armoir; witness insisted on having the armoir opened, which was done in presence of Mrs. Griffin, Banks, Haynes, and Simms; when the armoir was opened, the woman took a red silk handkerchief from the armoir, and appeared to try to get away with and conceal it; witness went up to Mrs. Griffin, and asked her what it was she had taken from the armoir; Banks said before the bundle was opened, they were notes and papers of no consequence, and the woman said the same. It contained a great number of mortgage notes and tax receipts. Mr. Banks said they had all been paid; witness looked at the notes, and saw no marks of cancel on any of them, except two or three. The notes were drawn to the order of William Robinson; Haynes threatened him with a suit, on the ground that he was seizing more property than was sufficient to satisfy the writ. Witness said that Banks had said the same was paid. Robinson was sent for, when the woman said she owed him two years' rent, and he said she did owe him two years' rent. Witness, on seeing Robinson, asked him if he were one of the persons defendant in the suit of the City Bank vs. Banks et al., and he said he was. Witness told him he had some papers for him in that suit, and that he had been unable to find him. Robinson claimed to be the owner of the premises where Mrs. Griffin lived. Banks was all the time advising the woman not to pay the debt. Witness commenced making a list of the notes; the list was completed, and witness was about writing the notice of seizure, when Robinson advised the woman to pay the debt, and she came to witness and got the amount of the debt, interest, and cost. The amount of the execution was paid, and witness gave back the notes to Mrs. Griffin, and tore up or gave away the list. Knows they were mortgage notes, because they were signed

"ne varietur" by Mr. Marks, notary; as far as he can recollect there were 12 notes of $855 33, or $835 33, all paraphed by Marks, payable at different times; there were other notes, one of the notes marked was signed by one named Richardson. Believes that Robinson was one of the endorsers on these notes; all or the greater part of the notes were drawn to the order of Robinson. All the notes that were paraphed were paraphed by Marks; there was a tax receipt among the papers in favor of Robinson for taxes on property, marked on the back as valued at $60,000; there were other tax receipts in the name of Robinson. The woman said in the presence of Mr. Banks, the notes did not belong to her; witness asked Banks if they were his, and Banks said, it was witness's business to find out; he told the woman that, as he found the notes in her possession, the presumption was they belonged to her; while witness was writing a receipt for the money, Banks came and asked where were the notes; witness told him to call the woman and he would give them to her; when she came, witness counted over the notes one by one, and asked her if it was all right, and she answered it was. Robinson looked very scared when witness asked him if his name was Robinson. Banks said it was of no use to open the armoir, there was nothing in it; and afterwards, when the bundle was discovered, Banks said it was of no use, they were papers of no consequence. Witness then asked him if he had any interest in the matter, and Banks gave him no positive answer. Banks repeated several times that the notes were paid. Witness then asked him if the notes were his, and Banks answered it was witness's business to find out. Robinson was not present when the notes were examined; he was down stairs; the money was paid in one of the rooms down stairs.

Testimony filed 13th March, 1844.

John S. Pritchard, witness for plaintiff, sworn, says, he was tenant of Banks; leased the property called the Commercial Hotel, and a small property adjoining. The lease was passed before Marks, and notes given for the whole term; he has paid the notes which he now produces under the lease since 30th July, 1842, viz: 5 notes of $683 33⅓, dated September 29th, 1841, drawn by witness, then endorsed George Allan, one Wells, and one Cammack; the 1st one due 1st August, 1842, 2d due 1st October, 1842, 3d due 1st December, 1842, 4th due 1st February, 1843, 5th due 1st April, 1843. Witness also paid six notes of $120 each, all dated 6th April, 1842, drawn by witness; and five of them endorsed by George Allan, and one by Banks alone; five due from 1st August, 1842, on the 1st of same months as those above; the 6th due on the 1st June, 1843; all of which notes are to the order of Thomas Banks, and by him endorsed as first endorser. Some of these notes were paid in the Gas Banks, one was paid to Cammack. Witness not being able to meet some of the notes, got Allan to withdraw them from bank, and in some cases new notes were given; cannot recollect if he paid any notes out of bank, or to whom he paid them. He received some notices from the Gas Bank, stating the time

they were due; thinks he paid some of them to Robb & Hoge. Has paid no notes since April, 1843, given for the large lease, and only one of those due for the small lease; there are now due four notes on one lease, and four on the other, which have not been paid; there has been demand of payment of three of the large notes, the first by G. Allan, 2d by Mr. Simpson, 3d by Mr. Commagere, clerk at Marks' office; witness refused to pay these notes; only one of the small notes has been demanded, and it was by Mr. Commagere. Suit has been brought against witness for one only of these notes, and that for the one held by Simpson, the suit in this court.

Cross examined.

The one held by Cammack was sued on by Cammack in commercial court, and judgment obtained and was paid. The lease was 5 years; witness asked to have the lease for that time. Does not know if it is customary for other landlords to take notes, payable at stated periods, for the lease.

Adolphe Meynier called for cross examination says, the notes referred to by him, in his direct examination, were in an armoir in the house of Mrs. Griffin. The name of Robinson was on a great number of them. Mrs. Griffin called Robinson "uncle," and said she had kept the papers for him. The notes were together with tax receipts. Witness had special instructions from plaintiff's attorney to insist on opening the armoir. Banks offered himself as security, but witness refused him, as no security could be taken. Lewis came about an hour after Banks. Was in the house from 10 till about 3 o'clock; he waited to afford Mrs. Griffin an opportunity for sending for her uncle. Lewis came about the same time as Robinson. Witness, seeing the furniture was insufficient, wished to have the armoir opened, as he was informed there was something worth seizing. Witness told her if she refused to open it, the lock would have to be broken. Mr. Conklin spoke of the circumstances of this seizure, and several persons called on witness to know about it. Mr. Micou, for one. Conklin insisted on having the armoir opened; he told witness the furniture was not sufficient.

A. W. Haines, witness for plaintiff, sworn. Was tenant of Banks, under lease before Marks. Witness did not give notes for the first quarter of the lease, he paid the money into the hands of Marks, and gave notes for the balance at the time he signed the act. He paid the notes described in the lease, due in January and April, 1843, and $\frac{2}{3}$ of the note due in July. Upon payment of $\frac{2}{3}$ of the note due in July, the note was given up to witness. He brought the three notes to court several times, attending heretofore as a witness in this case, but has lost or mislaid them, and cannot now produce them. The notice of George Allan was on the note due in July as 2d endorser. Does not recollect the names on the notes due in January and April. No note was given for October, 1842. Thinks he paid the October instalment at the time the act was signed. It had then come due. Witness had been out of town when the act was drafted, and when he came to sign it, $\frac{1}{4}$ rent

was due. Demand was made upon witness for the payment of the October note, 1843, by Marks' clerk, whose name he thinks is Commagere; he refused to pay it because the Union Bank had purchased the property at the assignee's sale. Nothing more was ever said about the note for October, 1843, or the note for January, 1844, or any suit brought against them. The note due in January, 1844, has not been presented for payment. Witness left word for Banks at Mr. Marks', that he wished to have the balance of his notes, and meeting Banks about a month or 5 weeks ago, he said if witness would go to Conrad's office he could get the notes; witness called on Conrad a few days afterwards, who shewed him the notes, but said he did not know if he was authorized to give them up. The remaining 5 notes were there. That is the only conversation he had with Banks on the subject. The first time witness spoke to Marks, or to Ricardo, his deputy, was after the Oct'r note had been presented. It was since the 1st of January, and about the middle of February last, that Banks told him where the notes were.

Cross examined.

Banks, in passing witness going to the post office, said, Mr. Haines those notes you were speaking of are at Mr. Conrad's, and I presume you can [get] them.

Document No. 74, *filed* 13*th March*, 1844.

NEW ORLEANS, *May* 3*d*, 1842.

For value received, I do hereby assign, unto George Allan, all my right, title, and interest in three hundred and forty-five shares of the capital stock of the City Bank of New Orleans, on which have been paid one hundred dollars on each share, being , as described by a certificate issued to , numbered , dated ; which certificate, by this transfer, is null and void.

Signed, THOS. BANKS.

Witness:

Signed, CHARLES A. F. RONDEAU.

NEW ORLEANS, 16*th July*, 1842.

For value received, I do hereby assign, unto John Morrison, all my right, title, and interest in three hundred and forty-five shares of the capital stock of the City Bank of New Orleans, on which has been paid one hundred dollars on each share, being , as described by a certificate issued to , numbered , dated ; which certificate, by this transfer, is null and void.

Signed, Per pro GEORGE ALLAN,
THOMAS BANKS.

Witness: Signed, CHARLES A. F. RONDEAU.

NEW ORLEANS, 30*th July*, 1842.

For value received, I do hereby assign, unto Thomas Banks, all my rights, title, and interest in three hundred and forty-five shares of the

capital stock of the City Bank of New Orleans, on which have been paid one hundred dollars on each share, being , as described by a certificate issued to , numbered , dated ; which certificate, by this transfer, is null and void.

Signed, JOHN MORRISON,
Per pro E. W. WELLS.

Witness: Signed, CHARLES A. F. RONDEAU.

I certify the foregoing three transfers to be true copies from the transfer book of the City Bank of New Orleans.

Signed, R. J. PALFREY, *Cashier.*

CITY BANK, NEW ORLEANS, 16*th March*, 1844.

Document No. 75, *filed* 13*th March*, 1845.

Know all men by these presents, that I, George Allan, of New Orleans, do hereby appoint Thomas Banks, esq., of New Orleans, my true and lawful attorney, for me, in my name and behalf, to transact the following concerns, in and with the City Bank of New Orleans, viz: To sell, transfer, or pledge any stock standing in, or which may hereafter stand in, my name, on the books of the said institution; to receive, and sign receipts for, all dividends now due, or which may grow due, on the stock as aforesaid; to vote for me, and in my name, at all meetings of stockholders of the said institution; to deposite money in the said institution, and draw checks in my name; to lodge promissory notes and bills of exchange for collection, and to withdraw the same at discretion; to borrow money and contract obligations with said institution in my name, whether on promissory notes or obligations drawn in his own favor, or in favor of any other person or persons, without limits to the amount, and from time to time to sign for the renewal of any part reloaned by the same institution; and, finally, empowering the institution, as aforesaid, to receive my attorney's signature for me, on all acceptances of bills of exchange, or endorsements, or promissory notes, bills, or obligations, whether drawn by himself or any other person or persons; hereby binding myself, my heirs or assigns, to all the acts of my said attorney, touching the premises, as were I personally present, or were the signature my own handwriting.

In witness whereof, I have hereunto set my hand and seal. Done at New Orleans, the 30th day of April, 1842.

Signed, GEORGE ALLAN. [L. S.]

Witness: Signed, DAN'L SHEEHAN.

Testimony filed 15*th March*, 1844.

G. O. Sweet, witness for plaintiff, sworn, says: is a member of the firm of Cooper & Co., former tenants of Banks. They occupied an office, 56, Magazine street, which they leased from Banks; they paid two notes, each for $120, one due 1st August, 1842, and the other 1st November, 1842, both endorsed Banks, and one afterwards by Allan. One of them, he thinks, was paid through bank, the one due 1st August. The other he cannot recollect how it was paid; cannot recollect

to whom the money was paid which bears the endorsement of Banks alone.

D. J. Rogers, witness for plaintiff, sworn, says: knows E. W. Wells and George Allan, the former about 25 years, and Allan since 1835; they are now officers of the Gas company; thinks they have been officers of the Gas company since 1835; they were there when witness went as superintendant of the company in 1836. Mr. Wells has been in receipt of $4,000 per annum from the company until the last two years, when his salary was reduced to $3,000. Allan received $2,500; but within the last two years has been cut down to $1,800. Mr. Allan is a subordinate officer to Mr. Wells as regards the grade of the officers; Mr. Wells is secretary, and Mr. Allan has charge of the fitting department, or of putting up gas fixtures in houses; they are friendly together; there is that intimacy between them which should exist between officers compelled to be associated together; Mr. Allan is a man of family; the duties of their office requires their undivided attention, and brings them in contact every hour of the day; believes Mr. Wells is the son-in-law of Mr. or Mrs. Banks; Mr. Wells has two children, Mr. Allan, three.

Cross examined.

Never enquired particularly into the relationship between Banks and Wells; does not know if Allan has been director of the Mechanics' and Traders' Bank; knows nothing of the circumstances of Allan and Wells. Allan might have had property when he (witness) first knew him, and have remained in possession of it without his knowledge; knows by report that Allan has several pieces of property. Allan is a prudent, industrious, saving man, and would suppose him to be a money-making man had he a chance.

Joseph Pilei, witness for plaintiff, sworn, says: he is surveyor of Municipality No. 2. It is his business to give the lines for building when called on. Witness was called on by Banks to give lines for Allan, of a property at the corner of Edward and Magazine streets; he surveyed it in November, 1842; witness asked for the bill of sale, and it was sent to him; it was in the name of Allan. Mr. Banks said he had been requested by Mr. George Allan to get witness to survey the property; he has not yet delivered the certificate, and his fee has not yet been paid; two-story brick buildings have been put on this lot, with kitchens in the rear; saw other buildings occasionally in passing, while it was being erected; saw Mr. Banks there several times; Banks has a great deal of experience, and is very skilful in superintending buildings. There was some other person on the spot when the building was going up, but cannot say in what quality he acted; cannot say how many times he saw Banks there; he saw him several, perhaps two or three times. Witness has not been called on by Banks for the lines of any other lot; has seen Banks several times at the new basin, where buildings were going up, but does not know in what quality he acted;

he is not sure it was a new building, or one merely repairing; thinks Banks lives there, but is not certain.

Testimony filed 16*th March*, 1844.

John Hewlett, witness for plaintiff, sworn, says: he was a tenant of Banks, and leased the Arcade; he gave Banks notes for the rent; the lease was passed before Marks, and ended in April, 1843; notes were given at six, nine, and twelve months after date; witness paid two of the notes in full, and has made partial payment on one of the others. It was the two first he thinks he paid in full; cannot state exactly to whom he paid the notes; one of them he recollects he paid to Forgay, the paver; thinks the balance of the notes paid to Forgay was paid in September and October of last year; believes Robert Cammack holds one of the notes not yet paid in full; the payment he made on the other notes was made to Mr. Allan; he paid $1,000 of this note to Mr. Allan; has paid only $300 on the note held by Cammack.

Cross examined.

Believes Mr. Forgay is a man of property as far as witness has heard. Mr. Forgay stands as well as any other man in the community; does not know whether he is a paver or a contractor for paving; believes he has been contracting with the 2d municipality for some time, and it generally does a large business in that line. Mr. Rob. Cammack has always been a man of good standing in the community, a man of business, and never heard any thing against his character; believes Cammack has always had sufficient means to go through the world with, but knows nothing of his means. He has always found Mr. Allan a perfect gentleman, a man always attending to his business, and should judge him a very prudent, industrious man.

William Witsett, witness for plaintiff, sworn: is a member of Whitsett & Roper, tenants of Banks; had a lease up to November, 1842, signed before Marks. Witness produces the notes due in August, September, October, and November, 1842; two endorsed by Thomas Banks alone, and one endorsed by T. Banks and George Allan, and one endorsed by T. Banks and James Robb; cannot recollect to whom he paid them; thinks he paid three at the office of Robb & Hoge, and the note endorsed Allan he paid at the office of Marks, notary.

Testimony filed 18*th March*, 1844.

J. S. Conklin, esq., witness for plaintiff, sworn, says: is an attorney of this court; was plaintiff's counsel in the case of Trimmell vs. Griffin, in this court; he went with the officer to make a seizure under the fi. fa. about a month ago, in January last. The house of defendant is near the centre of a square, fronting on Julia street, he thinks; the house is near the middle of the square, and has an alley leading out to Girod street; it is in the square bounded by Girod, Julia, St. Peter, and St. Paul streets; the house on the lot stands nearer Julia than Girod; there is also an entrance on St. Paul street; the position of the

house is marked on the plan No. 67, in pencil mark. After they went into the house, and made demand of Mrs. Griffin for the payment of the writ, they asked for the slave Mary, that had been attached; the slave was sick, and witness said if she would not pay the money he would seize the slave at any rate; the girl was found there. After considerable talk she told witness she had no fears; witness threatened to seize her furniture; she answered, that part of the furniture belonged to a lady who went up the river, and that she owed rent; defendant came about half an hour after witness had been there; witness spoke to Banks, and told him he had better pay the money; Banks replied that he had nothing to do with it; witness then asked him what he did there; Banks shook his head and went off; he soon came back again, and kept going backwards and forward; witness was not present when the notes were found. Mrs. Griffin wished to send for her uncle; witness gave her an hour, and went away, telling the sheriff's officer to watch well the armoir, as he was sure there was something valuable in it, and by good management they would get the money. When he returned Meynier informed him he had discovered certain notes, and shewed them to witness; they were drawn by one Wm. Robinson, f. m. c.; witness looked at several, and saw they were marked *ne variatur* by J. B. Marks, notary; does not remember if he wrote his name or made his mark merely, but saw on the note that Robinson was a free man of color; the notes he had in his hands were for a little over $800 each; neither Banks, Simms, nor any other person present offered to pay the debt before the notes were found; after the notes were found witness threatened to take the notes and the furniture. Banks said the notes did not belong to Priscilla; Haynes said the same, and said, besides, that he would sue them for seizing more property than would satisfy the execution. After some conversation the money was paid by Simms.

Cross examined.

At the time witness first saw the notes, they were in the hands of the officer and might be seen by all present. Witness said there could be no suit against him for damages when the property belonged to somebody else than the defendant.

J. A. Beard, witness for plaintiff, sworn, says: Is an auctioneer, and is now in the auction business; recollects attempting to sell as auctioneer the property which corresponds with the description in the deed from Florance to Forgay, passed on 27th July, 1842, before Mazureau, notary public; witness was privy to the private sale from Florance to Forgay, and made a brokerage out of it; witness was employed by Mr. Wm. Florance to effect the sale; went to Livaudais to see the property several times, both with Forgay, Banks, and Wells; afterwards witness was informed that the sale had been closed with Florance, who sent him a check for his commission; was employed by Forgay afterwards to sell the place, and Forgay directed witness *the* consult with Mr. Banks, and follow any direction Banks should give, as he had the man-

agement for him; he thinks, but is not positive, Banks was then living on the property; Mr. Wells was living there; recollects Banks told him Mrs. Banks had an objection to living there; consulted with Banks in relation to all offers, made and received instructions relating to the sale from Banks, offered the property once at auction, did not find a purchaser, and the sale was afterwards made without his intervention; witness has not been employed by Banks since July, 1842, to make any other sale; Banks since that time has asked him his opinion of the value of a lot at the corner of Edward and Magazine streets; witness was riding up Magazine st., and seeing Banks before a new house, corner of Magazine and Edward, got down and went through the house with Banks, as he wished to rent a house at that time, and Banks then asked his opinion of the value, and witness replied it was worth about $6,000; thinks the improvements were finished, all but the paving on Edward street, and Forgay and his men were there doing that work.

Cross examined.

Cannot say what was the intention of Banks in going with witness to Livaudais to see the property; Forgay referred witness to Banks as his agent as he understood; it was seven or eight months after the sale from Florance that witness was again charged with the sale; Banks has had a great deal to do with property, and should suppose there were few better judges of the value of real estate; if witness wished to have an opinion of the value of a piece of property, he knows no man whose opinion he would sooner take than Banks; witness is frequently applied to [to] say what is the value of property.

Re-examined.

Knows Commagere, clerk of Marks, notary; is junior clerk in the office, about 22 or 23 years of age; knows of no means he has except his salary.

Cross examined.

Never heard of any transactions he had, he is only a clerk in the office; knows nothing of his resources.

Document No. 84, filed 19th March, 1844.

List of Post Notes due Thomas Banks, delivered to Mr. Conrad since this suit.

	Notes.	Date.		
Berry, A. - -	2	September 1, 1841	1 May and 1 September, 1842, *a* $30 each - - - -	$60 00
Francisco, Jos. - -	1	" 17, "	1 October, 1843 - - - - - - - -	200 00
Haines, A. W. & R. M.	11	January 1, "	At 18, 24, 27, 30, 33, 36, 39, 42, 45, and 48 mos. - - - -	11,550 00
Haines, A. W. - -	5	October 1, "	1 October, 1843, and 1 Jan'y, April, July, and October, 1844, *a* $250 -	1,250 00
Hamburger, H. -	2	" 25, "	1 October and 1 November, 1843, *a* $30 - - - - -	60 00
Norman, Steel & Co. -	9	July 14, "	1 November, 1843; 1 February, May, August, November, 1844; 1 February, August, and November, 1845, *a* $450 - - - -	4,050 00
Pritchard, J. S. - -	19	Septem. 29, "	1 October and December, 1843; 1 February, April, June, August, October, and December, 1844; 1 February, April, June, August, October, and December, 1845; 1 February, April, June, August, and Dec'r, 1846 -	12,983 33
Do. do. - -	18	April 6, 1842	1 December, '43; 1 February, April, June, August, October, and December, '44 and '45; and February, April, June, August, and October, 1846 -	2,160 00
Morris, Phelan & Co. -	1	January 25, "	1 February, 1843 - - - - - - - -	275 00
Reed, James - -	1	August 27, 1841	1 September, 1842 - - - - - - - -	30 00
Stafflack & Jenny -	3	April 30, 1842	1 July, August, and September, 1842 - - - - -	75 00
				$32,693 33

Document S, (12 *notes,*) *filed April* 8, 1844.

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Six months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars thirty-three and one-third cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Twelve months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars thirty-three and one-third cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 8*th May*, 1846.

Eighteen months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars thirty-three one-third cents, for value received, with ten per cent. interest after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Twenty-four months after date, I promise to pay to the order of my-

self eight hundred and thirty-three dollars and thirty-three cents and one-third, for value received, with interest thereon at 10 per cent. per annum, after maturity.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.
JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Thirty months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars thirty-three cents and one-third, for value received, with ten per cent. interest thereon, after maturity.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.
JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Thirty-six months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars 33⅓ cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.
JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Thirty-six months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars 33⅓ cents, for value received,

with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

NEW ORLEANS, *9th May*, 1842.

Dolls. 833 33⅓.

Forty-two months after date, I promise to pay to the order of myself eight hundred thirty-three dollars 33⅓ cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

NEW ORLEANS, *9th May*, 1842.

Dolls. 833 33⅓.

Forty-eight months after date, I promise to pay to my own order eight hundred thirty-three dollars 33⅓ cents, for value received, with interest thereon after maturity, at the rate of ten per cent per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

NEW ORLEANS, *9th May*, 1842.

Dolls. 833 33⅓.

Fifty-four months after date, I promise to pay to the order of myself eight hundred and thirty-three dollars thirty-three cents one-third, for

value received, with interest thereon after maturity, at the rate of ten per cent per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Sixty months after date, I promise to pay to the order of myself, eight hundred [thirty-three dollars] and thirty-three one-third cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

JOS. B. MARKS, *Notary public.*

Dolls. 833 33⅓. NEW ORLEANS, 9*th May*, 1842.

Sixty-six months after date, I promise to pay to the order of myself eight hundred [thirty-three dollars] and thirty-three one-third cents, for value received, with interest thereon after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Ne varietur, New Orleans, 9 May, 1842.

J. B. MARKS, *Notary public.*

$833 33⅓. NEW ORLEANS, 9 *May*, 1842.

Seventy-two months after date. I promise to pay to the order of myself eight hundred and thirty-three dollars 33⅓ cents, for value received,

with interest thereon, after maturity, at the rate of ten per cent. per annum.

Signed, his WILLIAM x ROBERTSON. mark.

Witness: THEO. COMMAGERE.

Endorsed, his WILLIAM x ROBERTSON. mark.

Witness: Signed, THEO. COMMAGERE,

Judgment and reasons, filed 20th July, 1844.

CITY BANK OF NEW ORLEANS vs. THOMAS BANKS and others. } 22,888.

Reasons for judgment.

This is an impeachment of the certificate of discharge of Thomas Banks, under the bankrupt act of 1841, for fraud and wilful concealment of property.

The question of jurisdiction having been already disposed of, upon the exception, the only question remaining is one of fact.

The frauds and concealments charged may be ranged under the following heads:

1. That money and notes were in Banks' possession, at the time of his failure, which he did not put upon his schedule.

2. That he had made a simulated donation of lands and slaves to Mrs. Wells on the 2d of May, 1842, in contemplation of his bankruptcy, (which took place on the 30th July, 1842,) for the purpose of defrauding his creditors.

3. That he made a like simulated and fraudulent conveyance of ground and buildings to William Robertson, a free colored man, on the 16th May, 1842.

4. That he made a like simulated and fraudulent conveyance on the 24th May, 1842, to William Whitla.

5. That he made a like simulated and fraudulent conveyance on the 1st June, 1842, to George Allan.

It is furthermore charged in the petition that sundry pieces of property which have been bought by George Allan and Jos. B. Marks, since the 30 July, 1842, were in reality bought with Thomas Banks' money, and for his account, and are liable to be taken in execution of the judgment which plaintiffs ask against said Thomas Banks. This forms the subject of a revocatory demand, which is also contained in the present petition, and to which not only Banks, but George Allan, with Joseph B. Marks and others, are parties. But the suit having been discontinued as to all the parties defendants but Banks and his wife, I am spared the examination of this branch of the case.

A third branch of the subject will be the liability of Mrs. Banks, wife of Thomas Banks, to pay the bond subscribed by her jointly with her

said husband, and which bond forms the basis of the plaintiff's claims.

I will proceed to investigate the proof under each allegation of fraud in its order.

1. Had Banks money and bills receivable in his hands, at the time he filed his schedule in the bankrupt court, which he did not put upon that schedule?

In order to establish this ground the plaintiffs have introduced in evidence a great number of leases of property made by Thomas Banks to various individuals within the year previous to his failure. There has been also some evidence given of money received by him within the same time. It appears from the documents in evidence that the uniform practice of Mr. Banks was to take from his tenants, at the moment of signing their leases, their promissory notes, in a negotiable form, by monthly or quarterly, and, in one or two instances, by bi-monthly instalments, for the whole rent that would have to accrue during the whole period of their leases, be the same more or less.

The amount of these rent notes received by Banks, under the leases in evidence, within the year previous to his failure, is correctly enumerated by the counsel of plaintiff in a list he has taken the trouble to make out, *of* which I annex hereto.

This list of rent notes amounts to $94,326. To that amount the counsel adds $9,000, as the probable amount of leases of other pieces of property sold by Banks, assignee, but of which the leases have not been given in evidence. Although this estimate of $9,000 would not seem immoderate, yet, as it is my desire to proceed upon strict and positive evidence alone, I will reject it. Then follow two items of rent notes collected, besides the above, amounting to $7,550. Next, cash received from Mr. Conrad by T. Banks, within the year preceding his failure, for property sold, $12,000. Next follow three items of rent notes, not belonging to the leases in evidence, but which, it is assumed, must have been in Banks' possession at the time of his failure.

Five of the notes of A. W. Haines, and all of those of A. W. & R. M. Haines, as charged in these items, were certainly in Banks' possession at the time of his failure. These two items amount to $14,550.

Total bills receivable and cash proved to have come into Thomas Banks' hands, within the year previous to his failure, $128,426.

It is proved by Mr. Delapp, and the vouchers referred to by him, that there was paid by Banks, in the years 1841 and 1842, the sum of - - - - - -	$15,936
And further, in discounts to Atchafalaya Bank, within the same time - - - - - -	1,226
	$17,162

There has also been much evidence given by defendants as to the very large amounts paid by Mr. Banks in building, shaving, &c., for many years back. This evidence I regard as entirely immaterial to the issue. It is also in proof that large amounts of the rent notes in ques-

tion were endorsed by Banks to R. C. Cammack, Geo. Allan, S. L. Forgay, and Commagere. But it is assumed, with much reason, by the counsel of plaintiff, that Banks must have received something for such assignments, and that the very fact of his endorsing them to other persons proves that he has realized their proceeds.

To this, however, the defendants' counsel object, that we have nothing to do with money or assets that may have come into Banks' hands previous to his bankruptcy, unless it is shewn they were in his hands at the moment of his bankruptcy. I think this doctrine is, in the main, correct. It is true, as observed by the counsel of plaintiffs, that circumstantial evidence may be stronger proof than positive testimony; yet, to have that effect, the circumstances must be numerous, unequivocal, and concurring directly to the same point. I do not find enough in the present case to enable me to say, for instance, that Mr. Banks had in his possession, when he filed his schedule, in July, 1842, the twelve thousand dollars of cash he had received of Mr. Conrad for property sold the latter in the January previous.

I do not find, in the record, circumstances which enable me to say that Mr. Banks had in his possession, when he filed his schedule, the money, be it more or less, which he had received from Mr. Cammack for the notes of Mitchell & Philips, or from Mr. Forgay for the note of Mr. Hewlett.

The record, however, does show, that, shortly before this case was tried, and some time after the suit was brought, Mr. Banks handed over to his assignee rent notes of his former tenants, being a part of those enumerated above, amounting to about thirty thousand dollars, of nominal value, and which he had not put upon his schedule. This fact is admitted; but it is said the non-production of these notes was not a concealment in the words of the statute. In support of this view of the case much evidence has been given about the extraordinary confusion and want of method which have always characterized Mr. Banks in his business.

It appears that he never kept any accounts, except in his head, and that friends were always telling him he would ruin himself by his carelessness. It is not a little extraordinary that Mr. Banks should have acquired the immense amount of property which he certainly possessed for many years, if he was so utterly incapable of taking care of his own business, as has been argued from the evidence given on this point.

But the truth is, these men who keep their accounts in their head are generally distinguished for the retention of their memory.

With regard to these particular notes given by Mr. Banks to his assignee, Mr. Conrad, in January last, it appears his memory was pretty good; for, in giving them to him, he informed him they were the same he had spoken to him about in the July preceding, and he had also spoken to him about the same notes twice in November or December, 1843.

Yet, strange to say, when Mr. Banks is questioned about a portion of these very notes, those of Pritchard, by the Bank of Louisiana, to cer-

tain interrogatories propounded in this court early in July, 1843, he answers, on the 6th November, 1843, three weeks before the institution of the present suit, that he had not the said notes, nor did he know where they were. This appears really to be a very extraordinary memory, which seems to recollect with sufficient acuteness to communicate a fact unsolicited, and even to repeat the same communication, again and again, in one quarter; and yet, when from another quarter the attention is called to the same fact in the solemn form of interrogatories on facts and articles, is found to be entirely oblivious.

It is very possible, nay probable, that Mr. Banks supposed he had surrendered property enough to pay his debts, but that did not excuse him from the obligation of surrendering all his property; and if Mr. Banks was not aware of the existence of the seventy-two notes of the tenants mentioned in Mr. Conrad's evidence, amounting to $32,000 and upwards, when he filed his schedule, on the 30th July, 1842, I do not find any attempt at explanation, in the evidence, of his coming to the knowledge of the existence of those notes in July, 1843, when he first communicated the fact to his assignee. The suit of the Bank of Louisiana vs. Banks and others, which had for object to get possession of a portion of these notes, was brought in this court on the 5th July, 1843. I do not find the citation among the papers, but it was issued; if so, it was served in July, 1843. In the same month Banks communicated to his assignee, for the first time, that he had certain notes in his possession which belong to his creditors. Is this coincidence entirely accidental?

After weighing the evidence most carefully, and comparing it with the rest of the case, I cannot acquit Mr. Banks of a knowledge that he had those bills receivable at the time he filed his schedule in the United States court, and of the wilful concealment of the same. The conclusion at which I have arrived on this charge, makes it unnecessary for me to travel through the very voluminous evidence bearing upon the other charges of fraud embodied in the petition.

There only remains to be examined the defence set up by Mrs. Banks.

This defendant has filed an answer, in which she adopts as her own all the pleas set up by the answer of her husband, so far as they are applicable to her case; among these pleas is that of general denial. From the evidence introduced by the defendant, in relation to the origin of the debt, which forms the object of this suit, it is clear Mrs. Banks intends to rely upon the provisions of our laws, which prohibit a married woman from being security for her husband. The statement filed by Mr. Palfrey, cashier of the City Bank, shews that the bond sued on was not, as it purports to be on its face, for a loan of money made to Thomas Banks and wife on the 17th June, 1837, but was a settlement of sundry liabilities of Thomas Banks to the City Bank, by notes, bills of exchange, &c , then past, due, and protested, with interest and damages on the same. The supreme court has held, on many occasions, that the wife cannot bind herself as security for her husband, and that the real nature of her contract, even when it purports to be

other than one of suretyship, may be shewn by parol. See, among other cases, that of Pilie vs. Patin, 8th La. R., p. 692. An exception to this general rule is found in the charters of several of our banks, and, among the rest, in that of plaintiffs. By the 6th section of the City Bank charter, the corporation is invested with all the rights and privileges usually exercised by banks. By the 8th section, the City Bank shall have like privileges granted to it, in making loans on mortgage, taking security, and enforcing payment thereof, as are now accorded by the law to the Consolidated Association of the Planters of Louisiana. By the 18th section, the directors of the City Bank shall be bound to loan at least three hundred thousand dollars, secured by mortgage on real property, on the terms and conditions contained in the charter of the Bank of Louisiana. By the 32d section of the charter of the Bank of Louisiana, it is provided, that in all hypothecary contracts or obligations entered into by any individual with or in favor of the bank, &c., it shall be lawful for the wife of such individual to bind herself jointly and in solido with him. The charter of the Consolidated Association (sec. 23) contains the same provisions verbatim. My opinion is, that the disability of a married woman to bind herself jointly and severally with her husband in a mortgage or other obligation, is to be considered as abrogated by the Legislature in favor of the City Bank of New Orleans.

It is therefore considered, that plaintiffs have judgment against Thomas Banks and Charlotte Fogarty, his wife, in solido, for the amount claimed in the petition, with costs.

STATE OF LOUISIANA, *first judicial district court:*

I hereby certify [that] the foregoing thirty-three pages do contain true copies from the record of the suit of the City Bank of New Orleans vs. Thomas Banks and others, No. 22,888 of the docket of this court.

W. P. BEDLOCK, [SEAL]
Deputy Clerk.

Clerk's office, 20th November, 1845.

Transcript from supreme court of Louisiana.

First judicial district court of Louisiana—exception and answer of Allan, filed 11th November, 1843.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

Into the said court, by his attorney, comes George Allan, cited as defendant in the above case, and pleads in bar to this suit, as against the above named Thomas Banks and this defendant, the discharge and certificate of said Banks, and excepts to plaintiff's impeachment thereof, for this, that plaintiff had full notice and opportunity to oppose said discharge in the United States district court for the eastern district of Lou-

isiana, holding sessions in bankruptcy; and not having then and there so opposed, cannot do so afterwards, except upon grounds and facts discovered since the hearing for a discharge; and as such grounds and facts are not alleged in plaintiff's petition and supplemental petition, they cannot be proven. Defendant (Allan) also excepts, for this, that such suit as this can only be brought by the assignee, as the proceedings in bankruptcy of said Banks are not yet completed; and if the property described in plaintiff's petition belonged, as plaintiff alleges, to said Banks, (which this defendant expressly denies,) it vested, by § 3 of the bankrupt [act], in his assignee. If the above exceptions and pleas be overruled, then this defendant, answering, denies all and singular the allegations in said petition and supplemental petition against said Banks and against this defendant; and prays for general relief and costs, and that the pleas, exceptions, and answers filed by said Banks, be deemed part thereof.

Signed, M. M. COHEN,
Of counsel for Allan.

Exception and answer of Banks, filed 12th December, 1843.

CITY BANK OF NEW ORLEANS, vs. THOMAS BANKS et al. } 22,888.—In the district court.

Thomas Banks, one of the defendants in the above entitled suit, now comes into court by his attorney, and, for his exceptions and answer to the plaintiff's petition, says: That the said plaintiff cannot have and maintain the present action against this respondent, for the following reasons:

1st. Because this "respondent has applied for and obtained the benefit of an act of the Congress of the United States of America, entitled "An act to establish an uniform system of bankruptcy throughout the United States, approved 19th August, 1841." That an assignee has been duly appointed under said law who represents all the creditors of this respondent, and who alone can prosecute an action like the present before the United States district court for the eastern district of Louisiana, sitting in bankruptcy; that therefore the present plaintiff has no right to institute said action, nor can this honorable court entertain jurisdiction thereof.

2d. Because the judgment of discharge and certificate thereof having been duly granted to this respondent by the said United States district court, sitting as a court of bankruptcy, operates as a full and complete discharge from all debts, contracts, and other engagements provable under said bankrupt law; which judgment of discharge and certificate is now pleaded in bar as a peremptory exception to the present action. And this respondent further avers and contends, that this honorable court cannot entertain jurisdiction either to inquire into the validity of said judgment of discharge and certificate, or into the pretended acts of fraud and concealment by which the plaintiff was a party to the

said proceedings in bankruptcy, and is bound by the judgment of discharge therein rendered. Wherefore, this respondent respectfully prays, that the plaintiff's petition be dismissed with costs. And in case the court should be of opinion that the foregoing exceptions ought to be overruled, then this respondent, answering to the merits, says, that he denies all and singular the allegations in said petition contained; and he expressly avers, that all the charges of fraud and concealment set forth in said petition are false and slanderous; that the prosecution of the present action is malicious; and that this respondent reserves to himself the right to institute his action in damages against the plaintiff for said malicious prosecution. Wherefore, this respondent respectfully prays to be hence dismissed, with costs; and he prays for all such other and further relief, aid, and remedy as the nature of his case may require, and the law will permit; and he will ever pray, &c., &c.

Signed, C. ROSELIUS, *for defendant.*

Exception and answer of Marks, filed December 13, 1843.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

First judicial district court of Louisiana.

Into the said court, by his attorney, comes J. B. Marks, cited as defendant in the above case, and pleads in bar to this suit, as against the above named Thomas Banks and this defendant, the discharge and certificate of said Banks, and excepts to plaintiff's impeachment thereof, for this, that plaintiff had full notice and opportunity to oppose said discharge in the United States district court for the eastern district of Louisiana, holding sessions in bankruptcy; and not having then and there so opposed, cannot do so afterwards, except upon grounds and facts discovered since the hearing for a discharge; and as such grounds and facts are not alleged in plaintiff's petition, they cannot be proved. Defendant J. B. Marks also excepts, for this, that such suit as this can only be brought by the assignee, as the proceedings in bankruptcy of said Banks are not yet completed; and, if the property described in plaintiff's petition belonged, as plaintiff alleges, to said Banks, (which this defendant denies,) it vested, by § 3 of the bankrupt law, in his assignee. If the above plea and exceptions be overruled, then this defendant, answering, denies all and singular the allegations in said petition against said bankrupt, and against this defendant; and prays that the pleas, exceptions, and answers of said Banks may be taken and deemed part thereof, and for costs and for general relief.

(Signed) M. M. COHEN,
Of counsel for J. B. Marks.

Testimony filed 4th January, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al. } 22,888.

Testimony taken and filed in open court, 4th January, 1844.

Defendants offered in evidence the certificate of W. K. Stiles, deputy marshal, now filed. It is admitted, that the plaintiff is placed on the schedule of Thomas Banks, in bankruptcy, for the amount of the claim of said bank. Defendant offered in evidence the certificate of discharge of Thomas Banks, bankrupt, in the United States district court; the said certificate to be afterwards filed. M. M. Cohen, esquire, witness for defendants, sworn, is commissioner in bankruptcy. It is to his personal knowledge that, yesterday, Mr. Conrad filed his first return in the bankrupt court as assignee of Thomas Banks; that said Conrad consulted witness as to the motion that should be made to refer the matter to the commissioner. Mr. Conrad is still acting as assignee, and has not been discharged from his trust.

Document.

I certify, that I served on the City Bank a notice of the time and place of hearing of the petition of Thomas Banks, for a discharge and certificate in bankruptcy, 30 days before the date of the day fixed for said hearing, by handing a copy of the original notice to Robert J. Palfrey, the cashier of said bank.

(Signed) W. K. STILES,
Deputy marshal.

Answer of Mrs. Banks, filed 4th January, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al. } In the district court.

Charlotte Fogarty, wife of Thomas Banks, and by him duly authorized and assisted in this behalf, now comes into court, by her attorney, and for exception and answer to the plaintiff's petition, and supplemental petition, says, that she adopts as her own the exceptions and answer filed in this case by her husband and co-defendant, Thomas Banks, as far as the same is applicable to her case; wherefore, she respectfully prays to be hence dismissed with costs; and she prays for general relief; and she will ever pray, &c.

(Signed) C. ROSELIUS, *Attorney.*

Exception and answer of Banks to supplemental petition, filed 4th January, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al. } 22,888.—In the district court.

The defendant, Thomas Banks, now again comes into court, by his

attorney, and, for exception and answer to the supplemental petition herein filed, says, that he persists and reiterates his exceptions and answer to the original, and adopts the same as applicable to said supplemental petition; wherefore, he prays to be hence dismissed with costs, and for general relief; and he will ever pray, &c.

(Signed) C. ROSELIUS, *Attorney.*

Order, 26 *January*, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

On motion of M. M. Cohen, esq., of counsel for George Allan, it is ordered, that to prevent misunderstanding of the judgment rendered in this case on the exceptions on the 24th instant, it is stated on the records that the judgment against said Allan only relates to the property acquired from Banks since the failure of the latter, and described in the petition under the No. 6.

Supplemental answer, filed 29th January, 1844.

CITY BANK,
vs.
THOMAS BANKS et al. } 22,888.

The defendants, Allan & Marks, now again come into court, and beg leave to file this their supplemental answer, in which they respectfully represent, that they are desirous to have the issue joined in this case tried by a jury; wherefore, they respectfully pray, that this case be tried by a jury; and they pray to be hence dismissed with costs, and for general relief, &c.

(Signed) M. M. COHEN,
For Allan & Marks.

Order, February 3d, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

On motion of Lockett & Micou, esquires, of counsel for the plaintiffs, it is ordered, that this cause be discontinued as to the defendants Marks & Allan.

Bill of exceptions, filed February, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al. } 22,888.—In the district court.

The defendant, Thomas Banks, now again comes into court, and begs leave to file this his supplemental answer, in which he respectfully represents, that he is desirous to have the issue joined in this case tried

by a jury; and he prays to be hence dismissed with costs, and for general relief; and he will ever pray, &c.

(Signed) C. ROSELIUS, *Attorney.*

Thomas Banks, being duly sworn, deposes and says: That he has been discharged from the obligation arising from the execution of the bond sued on, by having applied for and obtained the benefit of the law of Congress establishing a uniform system of bankruptcy, and that he has not been guilty of any act of fraud or concealment, as charged by the plaintiffs in their petition; and this affiant further swears, that he is not liable on said bond or obligation, because of his having been discharged as aforesaid, without any fraud or concealment on his part, by the proper court, under the act of Congress before referred to; that all the allegations in his original answer contained are correct and true.

(Signed) THOS. BANKS.

Sworn to and subscribed in open court, this 29th January, 1844.

T. GILMORE, *Dep. Clerk.*

Document I.

1841. Dr. Mr. Thomas Banks,

To Gideon Stephens, Cr.

January. By Northern blue flag stones, 704½ yards, *a* $1 50 per yard - - - - $1,056 75

Received payment in full.

Signed, GIDEON STEPHENS.

1842. Mr. Thomas Banks to P. Geraghty.

Delivered to P. Kairo, for you, northern blue flag stones, 504½ yards *a* $1 50 per yard - - $756 75

Signed, PATRICK GERAGHTY.

NEW ORLEANS, March 9th, 1844.

I certify that, at the request of Mr. Thomas Banks, I have this day measured and calculated the amount of flagging on the banquette fronting the Commercial Hotel, corner of Girod and Levee streets, and the adjoining banquette in front of the National Hotel, on Tchoupitoulas street, and the yard and ground floors of the same, and find the contents to be as follows:

1st. Commercial Hotel, and adjoining banquette on N. Levee street, 451 $\frac{14}{100}$ square yards *a* 37½ cts. per yard - - $169 18

2d. National Hotel $68 30 do - - 288 17

Total amount $457 29 - - - - 457 29

Fees of measurement $11 43.

Signed, GEO. T. DUNBAR,

Prov'l surveyor 2d municipality.

Document J.

Statement relative to Thomas Banks' acct. as stockholder in the Louisiana Insurance Company.

He owned 94 shares, amounting to - - -		$94,000 00
Of these, he had paid 25 per cent. for instalments before December, '39, of - -	$23,500 00	
10 per cent. for instalments required in December, 1839, supposed to be paid in 1840, under a judgment in the commercial court, in the case of M. Turner vs. Louisiana Insurance Company - - -	*9,400 00	
Amount on account of an instalment of 5 per cent., called for on 5th February, 1842—he gave his notes to A. Leftwitch (believed to have been paid) amounting to -	1,068 92	
		$33,969 08
Remaining unpaid of the subscription price per share -		60,030 92

* Of the sum of $9,400, which was to have been paid by Mr. Banks under the judgment of the commercial court, there is near $275 of which no definite information has been obtained; but it is supposed to have been attorney's fees and costs due Mr. Leftwitch, a judgment creditor of the company.

Document K.

Memorandum of receipts, notes, and accounts receipted [and] paid by Thomas Banks.

1841.	July	amount - -	$1,859 80	
	August	do - -	1,876 07	
	September	do - -	1,627 72	
	October	do - -	1,245 75	
	November	do - -	573 24	
	December	do - -	522 20	
				$7,698 78
1842.	January	amount - -	$787 28	
	February	do - -	2,087 69	
	March	do - -	1,342 27	
	April	do - -	1,110 69	
	May	do - -	489 11	
	June	do - -	420 44	
				6,237 26
				$13,936 26

On the pledge book of the Merchants' Bank, it appears that about January, 1842, a balance of the stock loan, originally $25,000, was paid. Amount of balance so paid is $2,000.

Document M.

STATE OF LOUISIANA, *city of New Orleans:*

Be it known, that on this 21st day of October, in the year of our Lord 1836, before me, David Lawson McCay, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Daniel Phillips, of this city, who declared that, for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, deliver, and set over, with full guarantee against all liens, mortgages, and incumbrances whatever, unto Mr. George Allan, also of this city, present and accepting for himself, his heirs and assigns, and acknowledging possession thereof, all that lot of ground situated in the suburb St. Mary, in this city, and designated as lot No. 39, on a plan drawn by Joseph Pilié, city surveyor, on the 20th day of January, 1832, and deposited in the office of Felix de Armas, notary public in this city; said lot measuring 28 feet 6 inches front on Girod street, by a depth, between parallel lines, of 110 feet, together with all the improvements thereon, and the appurtenances thereto belonging, being the same lot of ground which said Daniel Phillips acquired by purchase from Richard Hagan, of this city, by act before me, notary, on the 2d June, 1836. This sale is made for and in consideration of the price and sum of two thousand four hundred dollars, payable in the manner following, to wit: two hundred dollars cash, which said purchaser has paid to said vendor, who hereby acknowledges the receipt thereof; and for the remainder, $2,200, said purchaser hereby binds himself and his heirs to pay, in the place *to* said vendor, and on the days of their maturity, the six promissory notes following: three for the sum of $250 each, drawn by Buchanan & Hagan, to the order of, and endorsed by, Hagan, Nevin & Co., Wm. J. McLean, and Thomas Barrett, all dated 26th March, 1836, and payable, respectively, in 1, 2, and 3 years after date; which notes were paraphed *ne varietur* No. 39, by me, notary, in order to identify them with said lot; and three others for the sum of $483 33⅓ each, and drawn by said Daniel Phillips to the order of, and endorsed by, Jas. Wright, all dated 25th May, 1836, and payable, respectively, in 1, 2, and 3 years after date; the payment of which said six promissory notes is secured by the mortgage hereinafter recited; with regard to which mortgages, said purchaser hereby takes the place of said vendors. To have and to hold the said described lot of ground and appurtenances unto said purchaser, his heirs and assigns, forever. And the said Phillips does hereby bind himself, and his heirs, to warrant and defend for ever the property herein conveyed against all legal claims and demands whatsoever. And the said Daniel Phillips moreover transfers to said purchasers all the rights and actions of warranty to which he is or may be entitled against all the former proprietors of the property herein conveyed, subrogating said purchaser to said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been

by the present vendor. By the annexed certificate of the recorder of mortgages for this parish, dated this day, it appears there are no other mortgages standing in the name of said Daniel Phillips, and recorded against the lot of ground herein conveyed, than first, the mortgage he granted in favor of his said vendor by act passed before me, notary, on 2d June, 1836, to secure $1,450; and 2d, the assumption he took by the same act of mortgage, granted by Richard Hagan in favor of Burthe & Hiligsby, by act before me, notary, on 26th March, 1836, to secure $750; the amount of which mortgages has been assumed by said purchaser as aforesaid.

And next personally appeared Mrs. Eliza Power, wife of said Daniel Phillips, who, after the undersigned notary had explained to her, verbally, the nature and purport of the foregoing act of sale from her said husband to the said Mrs. George Allan, declared she was desirous of releasing, in favor of said purchaser, the property *the property* hereinbefore sold from the matrimonial, dotal, paraphernal, and other rights, from all other claims, mortgages, or privileges which she may be entitled, whether by virtue of her marriage with said Daniel Phillips, or otherwise. Whereupon the undersigned notary did explain, verbally, to said Mrs. Phillips, out of the presence of her said husband, the nature of her rights, which are here detailed, to wit. The wife has a legal mortgage upon the property of her husband in the following cases: first, for the restitution of her dowery, and reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage, either by succession or donation, from the [time the] succession was opened or the donation perfected; 3d, for the reimbursing the amount of her paraphernal property, alienated by her, and received by her husband, or otherwise disposed of for his individual interest; 4th, to indemnify her for her debts which she may have contracted with her husband; and, 5th, for the donations which may have been made to her by her husband on account of their marriage; and that, by renouncing said rights on the property herein sold, she would deprive herself, irrevocably, of all recourse herein; and said Mrs. Phillips did declare unto me, notary, that she was fully aware of, and acquainted with, the matrimonial, dotal, paraphernal, and other rights and privileges thus secured her by law on the property of her said husband; and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated, but all others, of any nature whatever, to which she may be entitled by any laws now or heretofore existing in the State of Louisiana.

And said Daniel Phillips being now present, and authorizing said Mrs. Phillips, his wife, in the execution of these presents, said Mrs. Phillips did declare again that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal and other rights, claims, and privileges, in favor of said purchaser on the property hereinbefore sold; binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation. Thus done

and passed, at the city of New Orleans, in presence of Messieurs Jules Mossy and Ernest Montilly, witnesses, both of lawful age, domiciliated in this city, who hereunto signed their names with the parties, and me, said notary.

(Signed) DANIEL PHILLIPS,
ELIZA PHILLIPS,
GEORGE ALLAN,
JULES MOSSY,
E. MONTILLY.
DAVID L. McCAY, *Not. Pub.* [L. S.]

A true copy of the original, New Orleans, March 27, 1844.
(Signed) DAVID L. McCAY, *Not. Pub.*

Document N.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, Carlile Pollock, notary public in and for said city, duly commissioned and sworn, personally came and appeared George W. Morgan, of this city, attorney in fact of Mr. Alexander Mylne, jr., of this city, duly constituted by procuration passed before me on the 20th April last, 1836, who declared that, for the consideration hereinafter expressed, and in pursuance of the public sale made on the 6th inst., by Isaac L. McCay, auctioneer, he does, herein acting in said quality, by these presents grant, bargain, and sell, unto George Allan, of this city, here present, acknowledging possession, and accepting all that lot of ground belonging to his said constituent, situate in the suburb Treme of this city, in the lot comprised within Esplanade, Robertson, Kerlerec, and Claiborne streets, designated as No. 20, on a plan drawn by L. Bringier, surveyor general, under date 27th September, 1836, annexed to an act of sale from said A. C. Mylne to An. Rasch, this day passed before me; said lot forming corner Kelerec and Robertson streets, and having, French measure, 30 feet front on the former st., by 120 feet in depth and front on Robertson st.; together with all the rights, privileges, and advantages thereto belonging, free from all encumbrances, as appears by the certificate of the conservator annexed to said plan; said premises make part of the property which said Alex. Mylne, purchased from Claude Treme, by act before Pierre Pedesclaus, notary in this city, on the 20th March, 1800. To have and to hold the said premises and appurtenances unto said purchaser, his heirs and assigns, to their proper use and behoof forever. And said Alexander, jr., for himself and his heirs, and premises and appurtenances to said purchaser, his heirs and assigns, shall and will warrant and forever defend, against the lawful claims of all persons whatever, by these presents. This sale is made for the price of $1025, which said seller, represented as aforesaid, acknowledged to have received in manner following, to wit: $256 25 in ready money, and the balance in 3 several promissory notes, drawn by said purchaser, under date of the 6th instant,

each for the sum of $256 25 to order of said Alex. Milne, payable respectively at 1, 2, and 3 years, and duly paraphed by me; and to secure the payment of said notes and special mortgage in favor of said seller, and the persons who may eventually be the bearer thereof, is hereby retained on said premises, and purchaser promising not to alienate or encumber said property to the prejudice of this act. Done and passed at the city of New Orleans, in the presence of Achille Chiappella and Dominique Dufour, witnesses, who have hereunto signed their names, together with said parties, and me, said notary, this 10th day of December, 1836.

(Signed) G. W. MORGAN,
GEORGE ALLAN,
J. CHIAPPELLA,
D. DUFOUR,
CARLILE POLLOCK, *Not. Pub.*

I certify the foregoing to be a true copy of the original act on record in my office, New Orleans, 28th March, 1844.

(Signed) CARLILE POLLOCK, *Not. Pub.* [L. S.]

Document O.

STATE OF LOUISIANA, *city of New Orleans.*

Be it known, that this day, before me, Joseph Benzaken Marks, a notary public in and for the city and parish of New Orleans, State of Louisiana, personally came and appeared Mr. George Allan, of this city, (unmarried,) who declared, that for the consideration of four thousand dollars, payable in the manner hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other encumbrances whatsoever, unto Mr. John Lyall, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledged delivery and possession thereof, a certain lot of ground situate in suburb St. Mary, of this parish, and designated as lot No. 39, on a plan drawn by Joseph Pilie, city surveyor, on the 20th January, 1832, and deposited in the office of Felix D. Armas, notary public in this city, said lot measuring 28 feet 6 inches front on Girod street, by a depth, between parallel lines, of 110 feet, together with all the improvements thereon, rights, ways, and privileges thereunto belonging, or in any wise appertaining; being the same lot of ground which said George Allan acquired by purchase from Daniel Phillips, of this city, by act passed before David L. McCay, notary public in this city, on the 31st October last, (1836;) and by reference to the annexed certificate of the recorder of mortgages for this city and parish, dated this day, it appears, that said lot is encumbered by the reversion of the mortgage he, said Allan, assumed by act before D. L. McCay, notary, on the 31st October, 1836, to the amount of $2,200; of the mortgage granted by Daniel Phillips, by act before said McCay, notary, dated 2d June, 1836, in favor of Richard Hagan,

to secure $1,450 of the mortgage granted by R. Hagan, by act before D. L. McCay, notary, dated March 26, 1836, in favor of D. T. Burthe and L. G. Hilinberg, to secure $750, which mortgage the present purchaser assumes, as will hereafter appear; to have and to hold the said lot of ground and appurtenances unto said purchaser, his heirs and assigns, to their use and behoof forever. And said vendor, for himself and his heirs, said property and appurtenances to the said purchaser, his heirs and assigns, shall and will warrant and forever defend, against the lawful claims of all persons whomsoever, by these presents; and said vendor does moreover subrogate said purchaser to all the rights and actions of warranty he has, or may have, against his own vendor, or the vendors of his vendor, fully authorizing said purchaser to exercise said rights and actions in the same manner as he himself might or could have done.

This sum is made, as well for the sum of eighteen hundred dollars, which he, said purchaser, has paid unto said vendor, in ready money, the receipt whereof is hereby acknowledged, and grants acquittances therefor, as that he, said purchaser, shall, as he hereby does, put himself in the place and stead of vendor, and assumes, as he hereby does assume, to pay to his acquittance, as well the following described notes assumed by him, said Allan, by his act of sale above mentioned, to wit: First, three notes for the sum of $250 each, drawn by Buchanan & Hagan to the order of, and endorsed by, Charles Byrne, and afterwards by Hagan, Niven & Co., Wm. J. McLean, and Thomas Burrett, all dated 26th March, 1836, and payable respectively in one, two, and three years after date; and 2d, on the sum of $483 33⅓, drawn by said Daniel Phillips to the order of, and endorsed by, James Wright, all dated 25th May, 1836, and payable respectively in one, two, and three years after date, as the reversions of the mortgages by which the payments of the same are secured.

Thus done and passed, in my office, at New Orleans, in presence of Isaac D. Marks and Daniel J. Ricardo, witnesses of lawful age, and domiciliated in this city, who hereto sign their names, with said parties and me, notary, this 14th day of February, 1837.

Original signed,

JOHN LYALL,
GEORGE ALLAN,
ISAAC D. MARKS,
D. J. RICARDO,
JOS. B. MARKS,
Notary Public.

I certify the foregoing to be a true copy of the original act extant in my office current register.

In faith whereof, I grant these presents under my signature and [L. S.] seal of office, at New Orleans, this 25th day of March, 1844.

Signed, JOS. B. MARKS, *Not. Pub.*

Document R.

STATE OF LOUISIANA, *city of New Orleans.*

Be it known, that this day, before me, Joseph B. Marks, a notary public, in and for the city and parish of New Orleans, and State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Mr. George Allan, of this city, (unmarried,) who declared, that for the consideration of fifteen hundred dollars, payable in the manner hereinafter set forth, does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatever, unto Messrs. James Sheehan and John Sheehan, carpenters, transacting business in this city, under the style and firm of John & James Sheehan, here present, and accepting and purchasing for themselves, their heirs and assigns, and acknowledging delivery and possession thereof, a certain lot of ground, with all the rights, ways, privileges, and advantages belonging, or in any wise appertaining, situate in the faubourg Treiné of this city, in the square comprised between Esplanade, Robertson, Kelerec, and Claiborne streets, and designated as lot No. 20, on a plan made by L. Bringier, surveyor general, under date of the 27th of September last, (1836,) and annexed to an act of sale from A. Milne to A. Rasch, passed in the office of Carlile Pollock, notary, on the 10th December last, (1836,) said lot forming the corner of Kerlerec and Robertson street, measuring, in French measure, 30 feet front on the former street, by 120 feet in depth and front on the latter street; which lot of ground was acquired by the present vendor from Mr. Alen Milne, by act before said Pollock, on said 10th December last. And by reference to the annexed certificate of the recorder of mortgages for this city and parish, this day, it appears, that the said lot of ground is encumbered with the mortgage he, said Allan, granted, by act before said Pollock, on said 10th December, 1836, in favor of A. Milne, his vendor, to secure $768 75; which mortgage said purchaser hereby assumes, as will hereinafter appear; to have and to hold said lot of ground and appurtenances unto said purchasers, their heirs and assigns, to their proper use and behoof forever. And said vendor, for himself and his heirs, said lot of ground and appurtenances, to said purchasers, their heirs and assigns, shall and will warrant and forever defend, against the lawful claims of all persons whatsoever, by these presents. And said vendor moreover subrogates said purchasers to all the rights and actions of warranty which he has, or may have, against his own vendor, or against the vendors of his vendor, fully authorizing said purchaser to exercise said rights and actions in the same manner as he himself could have done.

This sale is made as well for the sum of two hundred and fifty-six dollars and twenty-five cents in ready money, and four hundred and seventy-five dollars in the two several promissory notes of said purchasers for the sum of two hundred and thirty-seven dollars fifty [cents] each, drawn to the order of, and endorsed by, Patrick Jervin, dated

11th March instant, and payable respectively at three and six months after date, which notes and ready money were delivered to the present vendor, who hereby acknowledges the receipt thereof; as that they, said purchasers, shall, as they do hereby, put themselves in the place and stead of said vendor, and assume, as they hereby assume, to pay and take up, as they severally become due, three certain promissory notes for two hundred and fifty-six dollars twenty-five [cents,] drawn by the present vendor to the order of, and endorsed by, said Milne, dated 16th December last, (1836,) and payable respectively at one, two, and three years; which notes are secured by the mortgage he, said Allan, granted on said property in his aforesaid act of purchase; which mortgage is hereby assumed by the present purchasers, who put themselves in relation thereto in the place and stead of said vendor, as fully in every respect as need or can be required. And in order to secure the full and punctual payment at maturity of the two first described promissory notes, payable at three and six months after date, and which were duly identified by me, notary, the present purchasers hereby mortgage and specially hypothecate the lot of ground herein conveyed in favor of said vendor, or of any other holder or holders of said notes, until final payment, with promise not to alienate or deteriorate the same to the prejudice of this mortgage.

Thus done and passed in my office, in the city of New Orleans aforesaid, in presence of Isaac D. Marks and Daniel J. Ricardo, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, with said parties and me, the said notary, on this 18th day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

Original signed:

GEORGE ALLAN,
JOHN SHEELAN,
his
JAMES ⋈ SHEELAN,
mark.
ISAAC D. MARKS,
J. D. RICARDO.
JOS. B. MARKS, *Not. Pub.*

I certify the foregoing to be a true copy from the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this 25th day of March, 1844.

[L. S.] JOS. B. MARKS, *Not. Pub.*

Document U.

STATE OF LOUISIANA, *City of New Orleans.*

Be it known, that this day, before me, Joseph B. Marks, a notary public in and for the city and parish of New Orleans, and State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared William Robertson, a free man of color, of this city,

who declared that he is justly and truly indebted unto Auguste Theodore, a free man of color, also of this city, in the full and just sum of four thousand one hundred and sixty-seven dollars, for money to him this day loaned and advanced; and in payment of which he has furnished his three several promissory notes for the sum of thirteen hundred and eighty-nine dollars, each dated this day, drawn to his own order, and by himself endorsed, and payable respectively at one, two, and three years at the Bank of Louisiana, in this city, with interest thereon, from maturity until paid, at the rate of eight per cent. per annum, but without any right, however, on the part of said Robertson, to delay the payment of the same beyond the days of their respectively falling due; which notes have been paraphed "*ne varietur*" by me, notary, to identify them herewith. And in order to secure the full and punctual payment of said notes at maturity, the said William Robertson does by these presents specially mortgage and hypothecate, in favor of said Auguste Theodore, a free man of color, present, and accepting the same, (and who acknowledges to have the above described promissory notes in his possession,) and in favor of any and all holders of said notes, a certain piece or portion of ground, with all the buildings and improvements thereon, situated in the suburb De Lord, of this parish, in the square comprised within St. Paul, Girod, and St. Peter streets, and Julia street landing, measuring 85 feet front on St. Peter street, 129 feet 6 inches in depth on the side nearest Girod street, 129 feet 6 inches in depth on the side nearest Julia street landing, and 85 feet wide in the rear; which portion of ground is composed of the whole of lots Nos. 155, 156, and 30 feet from the rear of lots 150, 151, 152, 153, and 154, on the original plan drawn by L. Delafield, captain of engineers, in March, 1832, and deposited in the office of G. R. Stringer, notary, in this city; a figurative sketch of said portion of ground is annexed to an act passed before me, notary, on the 9th May, 1842; the said William Robertson hereby binding himself and his heirs not to sell, alienate, deteriorate, or encumber the same to the prejudice of this mortgage; being the same property which he, said Robertson, acquired from Thomas Banks, by an act passed before me, notary, on the 9th day of May, 1842. And by reference to the annexed certificate of the recorder of mortgages, of this city and parish, dated this day, it appears that there is no mortgage standing in the name of said Robertson, and recorded against the above described property, but the recorder certifies that said property is still subject to the following mortgage, to wit: the one granted by Thomas Banks, per act passed [before] H. B. Cenas, a notary public in this city, on the 6th of December, 1836, on the lots numbers 155 and 156, and other lots, in favor of the Louisiana State Insurance Company, to secure the sum of seventy-five thousand dollars, being the amount of 7-10ths parts of 94 shares of the capital stock of said company, whereof said Banks is owner. Thus done and passed in my office, in the city of New Orleans aforesaid, this 20th day of March, 1844, in presence of D. J. Ricardo and T. Commagere, witnesses of lawful age, who hereunto sign their names

with said appearers, and me, said notary; and at the moment of signing these presents said Robertson declared he could not write or sign his name; he has therefore made his usual mark to these presents, after the same had been fully explained and read to him by me, notary, in the presence of the witnesses above named.

Original signed:

his
WM. ✕ ROBERTSON,
mark.
AUGUSTE THEODORE,
D. J. RICARDO,
THO. COMMAGERE.
JOSEPH B. MARKS,
Notary Public.

I certify the foregoing to be a true copy from the original act extant in my current register.

In faith whereof I grant these presents under my signature and seal of office, at New Orleans, this 21st March, 1844.

Signed, JOS. B. MARKS, *Not. Pub.*

Document T.

Received, New Orleans, May 10, 1842, of William Robinson, four thousand one hundred and fifty-six dollars and sixty-five cents, (4,166 65,) the amount of five notes of eight hundred and thirty-three dollars thirty-three cents. He, William Robinson, binds himself to pay whatsoever may be due to the Canal Bank resulting from a debt due them on one lot, which lot is taken from the rear of lots Nos. 149, 150, 151, 152, 153, and 154, which lot is 156 feet deep, and 33 feet wide, more or less, and fronting on St. Paul street.

This property, which sale was made before Jos. B. Marks, on the 9th day of May, 1842, for ten thousand dollars, but the amount was really only five thousand dollars, which I have received in the above-mentioned manner, on the eleventh day of same month, and is in full of said purchase. The reason for making the sale for ten thousand dollars was to make it appear for that value, so that he could borrow money, or sell the property, more easily with the $10,000 than he could with $5,000.

(Signed,) THOMAS BANKS.

Witness: A. GASPARD.

Testimony filed 21st March, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

Testimony taken in open court, 21st March, 1844.

H. Hamberger, witness for defendants, sworn, says: He is the person mentioned in case of No. 7, Banks' Arcade. Paid almost all the notes until he found that business was bad, and was unable to pay any more. He told Banks so, and moved out of the house about August, not wish-

ing to occupy a house he was not paying for. Paid first in Atchafalaya Bank, afterwards in the Commercial Bank.

Thos. Commagere, witness for defendant, sworn, says: Is a clerk in the office of Marks, notary public, since 13th April, 1839. Marks' office had the agency of Banks' rents. No property was rented, to his knowledge, without a written lease. Marks had the renting of all the houses of Banks, and they were rented only on written leases. The tenants pay for the lease. Banks' going into the bankrupt court was a matter very astonishing; neither Marks nor any one in the office knew of it, until they heard from Mr. Conrad, from Ran. Christian. Mr. Banks was in the office almost every day before this time. Banks may have spoken to Mr. Marks about his business, but not to the clerks. Banks expected, as witness had heard, to get a surplus from the sale of his property; has heard Banks and others acquainted with the property say it was sacrificed.

Cross examined.

Has never calculated Banks' income from rents.

James Reed, witness for defendant, sworn: Was once a tenant of Banks; knows not if any of the notes, or any of them, were paid.

James E. Whitall, witness for defendant, sworn, says: Has known Mr. Banks some years; knows nothing of Mr. Banks' affairs since 1837. In 1835, Banks left for the North, and left witness in charge of his business; witness had charge of his business in 1836 and part of 1837. In 1837, witness endeavored to bring Banks' business within the compass of books. In 1836, he commenced to keep a bill book; up to that time he kept no books. Witness recollects asking Banks what he did for books, and Banks answered that he carried them in his head. In 1836 and 1837 Banks paid a good deal of interest money; remembers a sale of one thousand shares of Carrollton Bank stock in 1837, on which there was a loss of $10,000, as well as he can recollect. Notes were received in payment, and a loss of discount was suffered on the notes.

J. H. Dakin, witness for defendant, sworn, says: Is an architect; was employed by the assignee of Banks to make plans and surveys of the property surrendered. Is well acquainted with the dimensions and construction of the principal buildings belonging to the estate. Recollects noticing the National Hotel when it was going up, and speaking to Banks on the subject; Banks asked him his opinion of the probable costs; witness said he thought it would cost Banks $50,000 or $60,000. It might have cost another man more; Banks at that time did not know the cost himself; would think the adjoining building, occupied by Mrs. Morris, would cost $8,000; should think the two stores, corner of Tchoupitoulas and Gravier streets, would cost $10,000; should estimate the improvements of the Commercial Hotel worth $5,000; the two stores in Old Levee street, near Brenville, at $17,000; the stores at or near the corner at $7,000; and the one in the rear, fronting Brenville, at about $15,000. The National Hotel was built about three or four years ago; the stores at the corner of Tchoupitoulas and Gravier streets were built since the National Hotel.

Cross examined.

These buildings, the National Hotel and two stores corner of Gravier and Tchoupitoulas, are the last of the buildings built by Banks, previously to the bankruptcy, unless perhaps the small $1,500 building.

J. H. Smith, for defendant, sworn: Has known Banks many years; being asked if Mr. Banks was a good book-keeper or accountant, says, he should think quite the contrary; he kept no books, only a little memorandum book which he kept in his pocket. Mr. Banks was a very industrious man, but very erroneous in his accounts; sometimes he would come to witness who discounted paper for him, and would tell him (witness) that [he] had been to such a bank, and the clerk would tell him he had overdrawn his account; would suddenly want large sums of money to pay notes he had forgot, and would frequently deposit money in bank without his bank-book, so that it was in the power of any bank clerk to cheat him, and witness told him if he did not get some one to keep his accounts, he would be a ruined man; saw Banks once with a letter which he had received though the post-office, which was opposite witness' house; Banks, after opening the letter and seeing a large amount of notes enclosed in the same, said that the money did not belong to him. The notes had been enclosed to Banks by an absconding clerk of the Mechanics' and Traders' Bank, to cover Banks liabilities as security on his bond; witness advised Banks to give back the money to the bank, and he did so. Banks has for a series of years paid large sums for interest; within the last four years he has refused to pay interest.

Testimony taken in open court, 22d March, 1844.

W. W. Frazier, witness for defendant, sworn, says: Was cashier of the Merchants' Bank of New Orleans, from November, 1836, to February, 1840; the Merchants' Bank was agent for the Bank of the United States; as agent for the Bank of the United States his bank took *took* Banks' draft on houses in New York, and the commercial difficulties occurring at that time, these drafts were withdrawn and Banks' own paper, with mortgaged security, substituted. The amount of his notes so given was $96,500, for which his obligations, dated in May 1837, at one year's credit, bearing interest at ten per cent., were taken, which interest he paid for three years from the date of the notes, say payable in May, 1838, '39, and '40, about $10,000; during that time he also paid about $2,000 principal; that since May 1840 no payments have been made by him, as witness supposes, having left the bank in February, 1840. These payments were made principally by the discounts of paper for the said Banks, the proceeds of which were placed to his credit in bank, drawn on and applied to the payment of the interest on these notes. Besides the above notes, a note was discounted for him bearing mortgage on a building lot in Camp street. The amount of this note was $4,000 or $5,000. Besides the above transaction, there was a note of Mr. Banks for $2,500, taken of the Atchafalaya Bank, in settlement of some of her exchange due to the Bank of the United

States. This note was secured by a pledge of Orleans Cotton Press stock, and was settled either by Banks or by the Atchafalaya Bank, or was run through the Merchants' Bank. Besides the above, there may have been some smaller transactions which witness does not recollect, but which if existing will appear from the books of the United States Bank agency now in the criminal court; from witness's acquaintance with Mr. Banks' manner of transacting business, and his extensive affairs, would not be surprised that Banks could not account for a deficiency of $40,000 or $50,000 if called upon to do so, in the course of transactions running some three, or four, or five years.

Cross examined.

With regard to Banks' own notes, amounting to $96,500, no payments were ever made on them after May, 1840, to deponent's best belief.

Testimony filed, 23rd March, 1844.

CITY BANK OF NEW ORLEANS, vs. THOMAS BANKS et al. } 22,888.

Testimony taken in open court, 23rd March, 1844.

John Hewlett, recalled as witness for defendant, sworn, says: Was present at the lease of the property called the City Hotel. Has leased the same from 21st November last, for three years, and pays $7000 the first year; the 2nd year $7,500; and the 3rd year will depend entirely on his business, whether *the* will pay $8,000 or only $7,500. It is admitted that the property of Banks, at the assignee's sale, sold for much less than Banks and many others supposed it would bring. It appears from the transcript of the record of John Philips to his creditors, that on schedule A of said John Philips', among the liabilities as member of the firm of Mitchell & Philips, there stands the following:

Thomas Banks, 31 notes, $600 each, monthly, from 1st July last, up to 1st day of February, 1845; for rent of the National Hotel, New Orleans, $18,600; and also Thos. Banks' balance on furniture, due 1845, $5,400; the said schedule filed in bankrupt court, 14th December, 1842.

James Patton, witness for defendant, sworn, says: Has known Mr. Banks since 1832; has had occasion to know that Banks was engaged in large business affairs; knows that he never made a record of any thing in a commercial way in his life; and witness has had occasion to upbraid him for negligence growing out of transactions with him. Banks, to witness's knowledge, has paid enormous sums in the way of discount. Is acquainted with the fact of Banks having received money from Martin. This is his recollection: witness kept his office at the corner of Royal and Canal streets, immediately opposite where the post office then stood. Banks came over the street reading a letter into witness's office, and found some difficulty in making out the signature.

He shewed witness the letter, which read: "DEAR SIR: Enclosed you have $ (does not recollect the amount) of your bond for me.
MARTIN."

Banks then said he was security for Martin, receiving teller at the Mechanics' and Traders' Bank, and that he would bet something was wrong. It was Monday morning. Banks went over to the Mechanics' Bank, and found that Martin had been missing since the Saturday evening previous. It was not known at that moment that Martin had absconded; but they found *but they found* out on Martin's not coming to the bank, that he was missing from home. Witness well recollects the circumstance, because it was much talked of at the time. Martin was receiving teller; McMurdo was paying teller. Witness was as much as twenty times a day in the bank, and never saw Martin on the side of the bank where the paying teller stood.

Cross examined.

In speaking of the discounts paid by Banks, witness refers to the period from 1833 to 1840 inclusive; knows of payments of interest made occasionally by Banks in 1841, but cannot say the amount. It was not so high as previously. He has paid from first to last in extra interest, through witness's hands, between $300,000 and $400,000. Has sometimes paid 3 to 4 p. c. a month, since 1833. Banks' name has been a shaving medium in the market. Witness once asked Banks to endorse a note for him, and Banks asked witness to give him a piece of blank paper, that he had not time to wait. Witness drew the note for $20,000, and shewed it to Banks. Banks asked him what he wished for $20,000; witness said he wanted only $2,000, but had drawn it up for $20,000, to shew Banks how his carelessness might be taken advantage of. When Banks went to the North in 1836, witness became indebted to Banks in $6,000; and Banks never knew of it till he became indebted to witness in a subsequent transaction. Banks would buy stock and sell it again to command the ready cash, and often loose large sums on it that he kept no account of. Banks paid trifling sums of interest in 1842.

John C. Steward, witness for defendant, sworn: Knows Mr. George Allan, and has known him since 1836. Allan was in the habit of loaning money on interest, and purchasing notes. Has known him to speculate in real estate since witness knew him. Witness has purchased property from him; should think Allan was worth at least $20,000.

Cross examined.

Allan was first at the gas works when witness first became acquainted with him. Witness always understood his business was that of an officer of the Gas company.

John Lyall, witness for defendant, sworn: Knew George Allan in New York, in 1828. He was then a tin smith, and working at the gas works in New York. In this place witness has known him to loan money on interest, and purchase notes. He also speculated in real es-

tate. To witness's knowledge, Allan is in possession of considerable real estate; he has property on the corner of Common and Robertson's streets; and on the corner of Basin and Jackson and Franklin streets, Gravier and Carondelet; witness purchased the last bit of property for Allan. He purchased three lots at the same sale, one for himself, one for Allan, and one for Pike. Knows Allan had money with him from New York, but cannot say how much. Witness and Allan boarded at the same house after he arrived here.

T. Tastet, witness for defendant sworn: gave Banks six notes, as far as he can recollect, three of [which] were paid.

Auguste Theodore, f. m. c., witness for defendant, sworn: knows William Robertson, f. m. c., since 1838. Has lent money to Robertson; the last time he lent him money was in 1842. Robertson told him he had bought some property, and that he could discount the notes at a reasonable rate; witness went to see the property, and lent him $3,333 and some cents, of his own and of his mother-in-law's money, for which, by agreement, Robertson gave him four of the notes he had given for the property. Afterwards, his mother-in-law being dissatisfied with the security, witness asked Robertson for a mortgage, which he agreed to give. The four notes given by Robertson *was* drawn by Robertson to the order of Bank or Banks, each for 1,100 and some dollars. The property on which the mortgage was afterwards given is near the new basin, but not fronting the basin. It fronts on a back street whose name he does not recollect Gave Marks the four notes when he went to his office to get the mortgage, and received three notes with interest added. Robertson had drays and a barber shop when witness first knew him. He was an industrious man, and witness has often procured money for him, which he has always punctually paid back. There are two houses and kitchens of two stories on the property mortgaged by Robertson to secure the loan witness had made him. Witness has had the notes in his possession since May, 1842, until a few days ago, when the mortgage was executed.

Cross examined.

Robertson lives on Union, between Love and Good Children streets, third municipality. Defendant offered in evidence statement of Mr. Chinn, now filed.

Statement of Mr. Chinn, filed 23d March, 1844.

R. H. Chinn states, that some three or four years since, the time not recollected, he thought it necessary in the service of a Philadelphia client to know the relations subsisting between Thomas Banks and one of his tenants in Chartres street. To that end he called upon Banks, then residing near the corner of Julia and Camp streets. Mr. Banks professed ignorance upon the subject, but said his papers would show. He then resorted to a cabinet in which papers appeared to be loosely thrown, and after rummaging among his papers, he procured one or more, evidencing the name of his tenant, the time and terms of lease.

The deponent has no further knowledge of the manner of conducting his business pursued by Mr. Banks.

Testimony taken in open court, 25th March, 1844.

Defendant offered document A and B, also document C. J. P. Delapp, witness for defendant, sworn. Has been employed for a few days past in examining the affairs of Mr. Banks. Defendant offered in evidence D, E, and F, also book G. W. E. Leverich, witness for defendant, sworn. Has looked over the books of the Bank of Louisiana, of which bank he is cashier, to know what amount Banks has paid said bank. The amount of Banks's debt from 1837 to 1838, was $145,000, which sum bore 9 per cent. interest, payable in advance. Banks has paid the said bank from 11th June, 1837, up to the 20th August, 1841, $61,840 on account of interest; the last payment was on the 20th August, 1841, and there was then a small balance of interest left due; no part of the principal was paid. The account filed marked *marked* H, was made out by witness, and shews the dates of payments, &c.; some of the payments in said statement were made by discount of other notes. The statement does not shew the discount of other notes. The statement does not shew the discount, the amount of the discounts is $2,079 76, and $121 93 discounts paid through Cammack & Co.

Document A.

UNITED STATES OF AMERICA,
State of Louisiana.

City of New Orleans.

By this public instrument be it known, that I, Joseph Benzaken Marks, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by letters patent under the great seal of the State of Louisiana, and by law invested with full power and authority to attest all instruments in writing and administer oaths, *quo ad* the duties of my office, do certify, that by an act passed before Charles de Armas, late a notary public in this city, (of whom I am the successor in office,) on the 16th September, 1835, Thomas Banks purchased of Richard Terrell a certain lot of ground, together with the buildings and improvements thereon, situated in the fauxburg St. Mary, and designated by the lot number 1, a particular plan drawn by J. Pilié, city surveyor, dated 20th May, 1830, and annexed to an act passed in the office of C. de Armas, notary, on the 14th February, 1831, measuring, in French measure, 60 feet in front on Tchoupitoulas street, by 149 feet 10 inches in depth on the line which separates it from property now or lately belonging to Mr. Morgan, and 150 feet 6 inches in depth on the line which separates it from the property belonging to the estate of Alexander la Branch, and that said Banks gave in payment for said property twenty-five thousand dollars in cash, and assumed a bond or obligation due the Louisiana Bank for $15,000.

In faith whereof, I grant these presents under my signature and impress of my seal of office, this twenty-second day of March, [L. S.] 1844.

Signed JOSEPH B. MARKS, *Not. Pub.*

Document B.

Office of mortgages. The undersigned, recorder of mortgages for the city and parish of New Orleans, State of Louisiana, certifies, that in the records in his office there are no other mortgages standing in the name of Thomas Banks, and recorded against a certain lot of ground, together with the buildings thereon, situate in the suburb St. Mary, and designated as No. one on a particular plan drawn by J. Pilié on the 20th May, 1830, measuring, in French measure, 60 feet front on Tchoupitoulas street, by 149 feet 10 inches in depth on the line which separates it from property now or lately belonging to M. Morgan, and 150 feet 6 inches in depth on the line which separates it from property now or lately belonging to the estate of Alexander la Branch.

Then the following, viz:

1st. The one he granted jointly with Mrs. Charlotte Fogarty, per act passed before A. Mazureau, notary, dated the sixth April, 1837, in favor of the Union Bank of Louisiana (on said property and others) to secure eighty thousand dollars (80,000) of shares of said bank, and the eventual interest at 10 per cent. per annum.

2d. The one he granted jointly with his said wife, per act passed before Mazureau, notary, on the 27th July, 1841, in favor of said Union Bank (on said property and others) to secure ninety thousand four hundred dollars (90,400) of shares of said bank, and the eventual interest at 10 per cent. per annum.

3d. The one he granted jointly with his wife, per act passed before A. Mazureau, notary, dated 27th July, 1841, in favor of said Union Bank (on the same property and others) to secure, 1st, the payment of a stock note of twenty-seven thousand one hundred and twenty dollars, ($27,120,) being the renewal of their original stock in favor of said bank. 2d. The sum of thirteen thousand five hundred and sixty dollars, ($13,560,) being the amount of a loan granted to them by said bank. 3d. And the eventual interest at the rate of ten per cent. per annum. 4th. The one he granted jointly with his said wife, per act passed before A. Mazureau, notary, dated 27th July, 1841, in favor of said Union Bank (on said property No. one and others) to secure eighty thousand eight hundred and twenty-five dollars ($80,825) agreeably to said act. 5th. And the general one in favor of Patsey Shall, wife of George Allan, resulting from a judgment rendered by the first judicial district court on the 25th March, 1843, for two thousand and sixty-six dollars ($2,066) with interest and costs.

New Orleans, March 25th, 1844.

Signed EDMUND P. WILTZ,
Deputy Recorder.

Document C.

F. B. Conrad, assignee of the estate of Thos. Banks, bankrupt. In the United States district court, eastern district of Louisiana.

In pursuance and by virtue of an order of court dated December 2nd, 1843, issued from the honorable the district court of the United States for the eastern district of Louisiana, the 18th day of May, 1843, at 12 o'clock, M., at Banks' arcade, Magazine street, between Natchez and Gravier streets, the following described property, surrendered by said bankrupt to his creditors after legal advertisement, and they were adjudicated to the following persons, they being the last and highest bidder, viz:

1st. All that valuable share of ground, with the buildings and improvements thereon, situated in the square encompassed within Camp, Common, Canal, and Magazine streets, fronting on Camp and Common streets, heretofore known as the City Hotel, said property being divided into the following lots, as per plan of James H. Dakin, dated 5th January, 1843, which plan will be exhibited on the day of sale; said lots measure in English measure as follows, viz:

1st. Lot number one, being that valuable lot of ground situated and forming the corner of Camp and Common streets, and measuring 23 feet 10 inches front on Camp street, by 62 feet 6 $\frac{5}{100}$ inches in depth and front on Common street, 63 feet $\frac{5}{8}$ in. on the opposite side line, and 22 ft. 5 in. in the rear, with the four story brick building thereon, together with 140 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for eighteen thousand one hundred dolls.—$18,100. The lower story of this building is divided into three tenements, of which the corner is rented at the rate of $1,600 per annum, the adjoining tenement on Common street at $794 per annum, and the segar shop adjoining this lot at $360 per annum; but the purchaser will be entitled to *more* of these rents up to the 31st of October next, except that of the segar shop.

2nd. Lot No. 2, adjoins the aforementioned lot, and has a front on Camp street of 23 feet 10 inches, by a depth of 63 feet 5$\frac{5}{8}$ inches in the line separating it from lot No. 1, and of 64 feet 4$\frac{3}{4}$ in. on the opposite side line, and 22 feet 5 in. wide in the rear, with the third story brick store thereon, together with ninety shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for eleven thousand five hundred dollars, $11,500. The lower story of this building has been leased by the assignee, till the 31st day of October next, at the rate of $1,200 per annum.

3d. Lot No. 3, adjoins the aforementioned lot, and has a front on Camp street of 20 feet 10 in., by a depth of 63 feet 4$\frac{3}{4}$ in. on the line separating it from lot No. 2, and of 65 ft. 3$\frac{7}{8}$ on the opposite side line, and 22 feet 5 inches in width in the rear, with the three story brick building thereon, together with 90 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for nine thousand four hundred dollars, 9,400. The lower story of this building has

been leased by the assignee, till the 31st October next, at the rate of *of* $1,200 per annum.

4th. Lot No. 4, adjoins the aforementioned lot, and has a front on Camp street of 23 ft. 10 in., by a depth of 65 feet 3 in. on the line separating it from lot No. 3, and of 66 ft. 5 in. on the opposite side line, and 22 feet 5 in. in width in the rear, with the three story brick building thereon, together with 90 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for $9,300, 9,300. The lower part of the building has been leased by the assignee, till the 31st day of October next, at the rate of $840 per annum.

5th. Lot No. 5, adjoins the aforementioned lot, and has a front on Camp street of 23 feet 10 in., by a depth on the side line nearest Common st. of 90 feet 9 inches, and of 98 ft. 10 in. on the opposite side line, and 17 ft. 7½ in width in the rear, with the 3 story brick building thereon, together with 110 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for nine thousand five hundred dollars, 9,500. The lower story of this store is occupied by Messrs. Norman, Steele & Co. as a book store.

6. Lot No. 6, adjoins the aforementioned lot, and has a front on Camp street of 27 ft. 8 in., and a depth of 98 feet 10 in. on the line separating it from lot No. 5, and 108 feet 5 in. on an irregular line on the opposite side, and 17 ft. 6½ inches in width in the rear, with the three story brick building thereon, together with 110 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for $10,000, $10,000. In the rear of the two last mentioned lots are brick kitchens and several rooms. The lower story of the building on this lot has been leased by the assignee, till the 31st October next, at $840 per annum. The upper stories of all the above mentioned buildings have not been leased, having been heretofore used as a part of the City Hotel.

7. Lot No. 7, has an entire front on Common street, inclusive of the large entrance on Common street, of about 99 ft. 2 in., and a depth of 89 feet 8 in. on the line separating it from the rear of lots Nos. 1, 2, 3, 4, and of about 79 feet 5 inches on the opposite side line, and of about 96 feet 6 in. in width in the rear, with the 4 story brick building and back building thereon, together with 312 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for twenty-six thousand five hundred dollars, 26,500. This property embraces the large bar room, dining room, a large number of bed rooms, and is well adapted for a large boarding house or hotel.

Terms.

One-fourth of the purchase money payable cash, and for the remainder the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan on the stock to the amount of $25 per share, renewable according to the charter of the bank, and the balance of the price payable 6, 12, 18, and 24 months from the date of sale, in notes drawn by the purchaser to his own order, secured

by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until payment.

2. Four lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square bounded by Tchoupitoulas, Gravier, Magazine, and Natchez streets, and designated by Nos. 1, 2, 3, and 4, on a plan drawn by James H. Dakin, dated 15th December, 1842, to be exhibited on the day of sale; said lot measures, in English measure, as follows, viz:

Lot No. 1 measures 63 ft. 11 in. and 2 lines front on Tchoupitoulas street, by 159 ft. 8 inches and 2 lines deep on an irregular line which separates it from the property now or lately belonging to M. Morgan, and 160 feet 8 in. 8 lines on an irregular line which separates it from lot No. 2, and 63 feet 11 in. 2 lines in width in the rear, with that splendid 6 story brick building or edifice, and all the buildings and improvements thereon known as the National Hotel, together with 450 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for twenty thousand dollars, $20,000.

2. Lot No. 2, adjoins the aforementioned lot, and measures 31 feet 11 in. 7 lines front on Tchoupitoulas street, by a depth of 161 feet 1 in. on an irregular line which separates it from lot No. 3, and 160 ft. 8 in. 8 lines on an irregular line which separates it from lot No. 1, and 31 feet 11 in. 7 l. in width in the rear, with the 2 story brick buildings, dwelling, and brick back buildings thereon, together with 150 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for nine thousand dollars, 9,000. The lower part of this dwelling has been leased by the bankrupt, till the 31st October next, at the rate of $1,300 per annum, up to which time no rent will be received by the purchaser.

3rd. Lot No. 3, adjoins the aforementioned lot, and measures 31 ft. 11 in. 7 l. front on Tchoupitoulas street, by 161 feet 1 in. deep, on an irregular line separating it from lot No. 2, and 161 feet 1 in. 3 l. deep on the other side line, and 31 feet 11 in. 7 lines in the rear, with the 2 story house and the brick back buildings thereon, together with 150 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for nine thousand dollars, 9,000.

The lower part of this house has been leased by the assignee, till 31st October next, at the rate of $960 per annum. This and the preceding lot have on them a large double house, which is not divided; they are sold in their present situation to be divided by the purchasers, if they see proper.

4th. Lot No. 4 adjoins the above, and measures 21 feet 8 inches front on Tchoupitoulas street, running back on the line dividing it from lot No. 3, 101 feet 10 inches; thence on the rear line next Magazine street 70 feet front, on Gravier street 4 feet, being the width of an open alley leading from the yard on the premises into Gravier street; thence, on the line opposite the line on Magazine street, 48 feet; and thence 93 feet 9 inches, to meet the front on Tchoupitoulas street, with the four-story brick dwelling house and back buildings thereon; together with

152 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for 9,000.

The lower part of this building has been leased by the assignee till the 31st day of October next, at the rate of $600 per annum, and the upper part is rented by the month at $100.

Terms.

One-fourth of the purchase money payable [in] cash; and, for the remainder, the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan of the stock, to the amount of $25 per share, renewable according to the charter of said bank; and the balance of the price payable at 6, 12, and 18, and 24 months' credit from the day of sale, in notes drawn by the purchaser to his own order, and secured by mortgage on the property, and bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

Four lots of ground, with the buildings and improvements thereon, situated in the suburb St. Mary, in the square comprised within Poydras, Lafayette, Tchoupitoulas, and Commerce streets, and designated by the Nos. 1, 2, 3, 4, on a plan drawn by James H. Dakin, dated 15th December, 1842, to be exhibited on the day of sale, and measures, in English measure, as follows: Lot No. 1 measures 21 feet 11 inches 1 line front, on Tchoupitoulas street, by a depth of 79 feet 6 inches on the side line nearest Lafayette street, and 79 feet 9 inches on the opposite side line next to lot No. 2, and 21 feet 11 inches 1 line in width in the rear, with the three-story brick store thereon, together with 60 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for $5,000. The store on this lot has been leased by the assignee, till the 31st day of October next, at the rate of $720 per annum.

Lot No. 2 adjoins the above, and has a front on Tchoupitoulas street of 21 feet 11 inches and 2 lines, by a depth of 79 feet 9 inches on the line separating it from lot No. 1, and of eighty feet on the line separating it from lot No. 3, and 21 feet 11 inches 1 line in width in the rear, with the three-story brick store thereon, together with 60 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for five thousand (5,000).

The store on this lot has been leased by the assignee, till the 31st October next, at the rate of $720 per annum.

3d. Lot No. 3 adjoins the above, and measures 21 feet 11 inches and 1 line front on Tchoupitoulas street, by a depth of 80 feet on the line separating it from lot No. 2, and 80 feet 3 inches on the opposite line nearest Poydras street, and 28 feet 11 inches and 1 line in width in the rear, with the three-story brick store thereon, with 10 shares of the capital stock of the Union Bank of Louisiana, adjudicated to the Union Bank for five thousand dollars, (5,000).

The store on this lot has been leased by the assignee, till the 31st October next, at the rate of $720 per annum. Lot No. 4 measures 66

feet 10¼ inches front on Common street, by a depth of 87 feet on the line nearest Lafayette street, and of 76 feet 11½ inches on the opposite side line nearest Poydras street, and 65 feet 9 inches 3 lines in the rear, with the buildings and improvements thereon; together with 70 shares of the capital stock of the Union Bank of Louisiana, adjudicated to said Union Bank for eight thousand three hundred dollars, (8,300).

Terms.

One-fourth of the purchase money payable in cash; for the balance, the purchaser to furnish his obligation to the Union Bank of Louisiana, payable one year after date, for a loan of the stock to the amount of $25 per share, renewable according to the charter of said bank, and the balance of the price payable at 6, 12, 18, and 24 months from the day of sale, in notes drawn by the purchaser to his own order, and secured by mortgage on the property, and *and* bearing ten per cent. per annum interest from maturity, if not punctually paid, until final payment.

Rent Notes.

In nearly all cases where property has been leased by the assignee, notes payable monthly have been taken; which notes, or the proceeds thereof from the month of June next, will be delivered to the purchasers.

Acts of sale at the expense of the purchaser. Before Jos. B. Marks, notary public.

Signed, A. SIDNEY ROBERTSON,
J. P. WALDEN, *D'y Marshal.*

Document D.

NEW ORLEANS, *March 30th*, 1841.

Thomas Banks, esq., to A. Logan:

For hanging 48 room bells at the National Hotel to order, at $5 each,	$240 00
1 front-door bell,	5 00
1 porter's bell,	5 00
	$250 00

Received payment, in full.
Signed, ALEX. LOGAN.

Document E.

NEW ORLEANS, *February* 14, 1841.

Thomas Banks, esq., to John L. Clay:

To amount of bill rendered for amount of work and material at the National Hotel,	$243 22

Received payment.
Signed, JOHN L. CLAY.
(Received payment by note, dated September 1st, 1841.)

Document F—duplicate.

1841,	Mr. Thomas Banks bought of James Callaway—	
June 30.	To amount of account rendered, - -	$480 66
October 11.	Do. do. do. - -	18 63
1842,		
June 30.	Do. do. do. - -	80 98
		$580 27

Received payment.

Signed, JAMES CALLAWAY.

Book G.

New Orleans, November 14, 1840. Received from Mr. Thomas Banks $107 $\frac{06}{100}$ in full for 7 bales moss.

$107 06.

Signed, MALCOLM & MARTIN.

Received, New Orleans, 19th November, 1840, from Thomas Banks, esq., ninety-two $\frac{05}{100}$ dollars, in full for three bags of feathers, $92 05.

Signed, YEATMAN & CO.,
By S. Boyd.

Testimony taken in open court 20th March, 1844.

CITY BANK OF NEW ORLEANS,
vs.
THOMAS BANKS et al.

P. Gerahty, for defendant, sworn: Sold flag stones in 1842 to Banks to the amount of $807 25, which Banks paid him. Witness altered the date of the bill, and also the bill of Stephens' at Stephens' request. Banks called only a short time ago for the bills. Bills of Stephens & Gerahty now filed, marked I.

J. W. Murray, witness for defendant, sworn: Is counsel for Louisiana Insurance Company since January last; files statements of Banks with said company, marked J, which he collected from various sources. Witness has learned, that there was a claim of Turner for about $600 or $700, but knows not how it was settled.

J. P. Delapp, recalled for defendants, says: It appears from the receipted bills and notes produced that Banks had made payments according to the statements in witness' handwriting now filed, marked K. Defendant files, in evidence, account [of] sales of property by the marshal, marked L.

Document K.

Memorandum of receipts. Notes and accounts receipted [and] paid by Thomas Banks, already copied, vide page .

Testimony taken in open court March 30, 1844.

J. P. Delapp, witness for defendant, sworn: It appears, from the pass book kept by Banks with Atchafalya Bank, that he (Banks) paid said

bank, in discounts, between July, 1841, and Feburary, 1842, $1,226 03. The vouchers produced by witness yesterday were found by him by accident at Mr. Banks' house, where he had gone to make up other statements. Mr. Banks has no books, and his papers are in such a deranged state that it is impossible to make up a satisfactory statement of his affairs; neither can Mr. Banks, from his recollection, give any aid in making up such a statement. In 1841 witness was a book-keeper at the house of H. C. Cammack & Co.; Banks had a desk there, where he did his writing, such as renewing notes, &c. One day he found a bundle of rent notes in a pigeon hole in his desk that he did not know any thing about; and, taking up a handful of them, observed to witness, his tenants must have considered him a very lenient landlord. Witness has lately, only a few days ago, been called on to examine into Mr. Banks' accounts. First commenced examining them at Mr. Cohen's office, but was so much interrupted there he was obliged to retire to Mr. Banks' house, and there he found the vouchers. Defendant offered in evidence acts of sale M, N, O, P, lease Q; also testimony of F. B. Conrad, now filed; also act of sale R.

M. M. Cohen, esq., says, it is to his knowledge, as commissioner in bankruptcy, against the estate of Mitchell & Phillips, for the rent notes of the National Hotel, and balance in furniture, already noted in the previous testimony, and Cammack was a purchaser at the assignee's sale, and off-set the sum of $1,800 due at the date of the decree of Phillips in bankruptcy against the amount of his purchase of furniture, which was $1,402 81; and that the amount of the purchase of Cammack was credited on debt *on debt* claimed by Cammack, less the costs and charges of the sale of said furniture. Afterwards, Mr. Cohen, as commissioner, distributed the remaining funds in the bankruptcy of Philips & Cammack, received as small dividend about $100 thereupon.

Testimony taken in open court, 8 *April*, 1844.

CITY BANK vs. THOMAS BANKS. } 22,888.

W. E. Leverick, recalled by defendant: The mortgage assumed by Banks, in the act of sale from Terrell, was paid by a loan from the Bank of Louisiana for which Banks gave mortgage on a lot on New Levee street; on the 3d April, 1837, Banks applied to the Bank for a new loan. The bank agreed to loan him $1,500 on mortgage of property on New Levee street, and, as a condition of the loan, Banks was to pay the bond of Terrell to the bank for $15,000. The bond of Banks was taken for $1,500, and that of Terrell for the same amount paid on the 7th April, 1837. The original mortgage was paid by the proceeds of the new loan to Banks. Banks did not pay the new loan, or any part of the principal, before his bankruptcy. This loan forms an item in the statement furnished by witness of the liability of Banks to the bank. Banks has applied to the bank for a certificate of the pay-

ment of the mortgage of Terrell. Since the trial of this cause, a witness offered to give him a certificate that he had paid the mortgage of Terrell by a new one of his own. Banks answered, he did not want the certificate in that way; he declined taking any certificate.

Cross examined.

Does not recollect the day. It was some time last month, and after witness had been summoned to give evidence in the case. At the time Banks asked witness for the certificate, the mortgage of Terrell had been paid in the manner above stated. The bank purchased the property mortgaged to it on New Levee street at the assignee's sale.

Re-examined.

The application was made a few days before witness was sworn in the case, but after he had been summoned.

M. Abrams, witness for defendant, says: That for 3 or 4 months, in 1836, when Banks was at the North, witness was in charge of his cash, and authorized to collect some of the rents, but had to give up the charge; he could not find out from Banks any thing about his business. Banks had a great many transactions about this time, of which he kept no account. Witness says that, at the time, Banks was in the habit of endorsing for Cammack & Co., and it was then customary to receive at the banks, on deposit, checks on other banks. On one occasion, Cammack & Co. found to their credit, in different banks, a sum of $40,000 more than their books called for. It was ascertained Banks had advanced this much money, and knew nothing about it. It was made over to Banks, and in a day he had made use of it in other transactions. The book kept at that time by witness shews he had overdrawn his accounts in the bank about $44,000. The largest overdraft, he thinks, was in the Atchafalaya Bank, as *the* Banks was permitted to overdraw his account. The reason witness could *no* derive no information from Banks of his business was, because Banks kept no books, except an imperfect bill book, and did not know the state of his own affairs. He relied on the notices from the banks for his knowledge of the payments he made there.

Mr. Maxcent, for defendants, sworn: Is deputy parish clerk. The documents now shewn him in court comprise the whole record of the case; Conrad, assignee, praying for a mandamus in said court, with the exception of three entries on the minutes. The document shewn him, filed with transcript in supreme court, is the same that was annexed to the assignee's petition.

Defendant offered in evidence copy of record of parish court of Conrad, assignee, &c., praying for a mandamus, the same borrowed from the files of the supreme court, and also the judgment of the judge of the United States district court, and the opinions of the judges of the supreme court.

William Robinson, f. m. c., for defendant, sworn: Purchased, in May, 1842, a piece of property from Banks; has paid the notes; bor-

rowed money to pay them; paid Banks $4,000 for the 12 notes now shewn him; said notes filed in evidence under the letter S. Being asked by the court if he is sure of the date of the payment, says he is; it was about the 8th or 10th of May last. The receipt now offered in evidence, lettered T, was given by Banks to witness, and remained in his possession a long time after its date. Witness borrowed the whole of the money of one Auguste. Afterwards Auguste said that part of the money belonged to his mother-in-law, and that she thought the property was not worth the money, and witness gave him another mortgage. Recollects when he bought the property. It was a few days after that he borrowed the money; thinks the sale was passed in 1842 or 1843. Identifies Theodore Auguste, now in court, as the person who loaned him the money. Is sure he gave the notes a few days after he got the money. The foregoing notes, marked S, being shewn him, says some of them were first given to Auguste; gave him new notes afterwards. Theo. Auguste has not the notes. Witness had notes and receipts in a handkerchief, and it came on to rain. He left the notes in the hands of Priscilla, one of his tenants, near the New Basin, and was told some one was after his notes. Has not paid back the money to Theodore; paid him interest, and as soon as he gets money owing him, will pay Theodore. When witness went one day to Priscilla, found some gentleman with his notes and his handkerchief at the table.

Theodore Auguste, recalled by defendant, says: Lent Robinson $3,333 and some cents, about 8 or 10 May. The notes given him, 2ndly, by Robinson, included the interest due on the loan up to the date of the mortgage. The first notes given witness were for $833 and odd cents, each made to the order of Banks, and the notes Robinson had given for the property.

Cross examined.

Robinson gave him the first four notes which amounted to $3,333 $\frac{00}{100}$, which he retained till March last, when he received the mortgage. Was mistaken, if he said, on a former occasion, the notes were for $1,100 and odd dollars; may have been confused, and made a mistake, or the clerk may have taken his evidence incorrectly down; never intended to say any thing else than the notes were for $800 and odd dollars.

Testimony taken in open court, 9th April, 1844.

CITY BANK OF NEW ORLEANS, vs. THOMAS BANKS et al. } 22,888.

A. Gaspard, f. m. c., witness for defendant, says: he attested the receipt, recognises his signature to the same now shown; the receipt was made and signed in the date of its date; witness saw $4,166 65 paid Mr. Banks by Mr. Robinson; this took place at Mr. Robertson's house in Frenchmen's street, between Love and Good Children streets; witness is in the habit of going every day to Robertson's house.

Cross examined.

Did not write down or keep any memorandum of the date; knows the time; kept a memorandum of the amount paid, because he signed the paper; will produce the paper to-morrow evening; witness lives in 2nd municipality; nothing was done at the time of paying the money but the signing of the receipt; no other papers of any kind were seen at that time; saw no notes; no one else was present but Banks, Robertson, and witness; the paper is not in his handwriting; does not know in whose handwriting; it was brought there by Mr. Banks; witness has not seen the paper since he signed it, until it was shown him in the hand; does not know who sent for him to come here; a young man came for him yesterday evening in a cab; has not conversed with Banks yesterday or to-day on this business, or talked with Robertson or any one else but Mr. Roselius on the subject, and witness went to the office of Mr. Roselius to know what was wanted with him when he came to know; he was looked for, being asked how he came to know the date of the receipt so precisely, says he has a very good memory; part of the money was in paper, all except $50 or 60 in silver; cannot recollect the banks of which the notes *of which* were given; some were in notes of the Commercial and some in notes of the Louisiana Bank; some of the notes were of the denomination of $500 and some of $100; only one of the $500 notes was of the Commercial Bank; is not related to Robertson, does not know Priscilla Griffin; called at Robertson's to see his sisters who lived below; was not sent for to witness the paper; happened to be in the house at the time; cannot remember the day of the week; it was not on Sunday.

Defendant offered statement made by witness Palfrey, now filed, marked V.

Statement V.

Statement made with Thomas Banks on the 21st July, 1837, by mortgage loan of $55,000.

T. Banks, note secured by collateral, due 31st April, 1837,				$25,000
Notes secured by mortgage, Do. endorsed by Wm. Brand,	10th May,	"		1,500
Do. " H. C. Cammack,	"	"	"	4,500
Do. " Peters & Millard & do.	28th June,	"		900
Do. " H. C. Cammack,		"		4,000
Do. " Wm. Brand, 7th May, 1838,				2,036 46
Do. bill of exchange on L. Judun, Mobile, protested for non payment, - - - - -				10,000
Damages on bills of exchange as above, - - -				1,154 63
Balance of interest to date, - - - - -				210 66
Protest, &c., - - - - -				11
				$50,869 14

Nett proceeds of mortgage loan $50,600, 14th March, 1844.

(Signed) R. J. PALFREY, *Cash'r.*

Order of discontinuance, 28th March, 1845.

PRESIDENT, DIRECTORS & Co., of the Bank of Louisiana.
vs.
THOS. BANKS et al. } 22,888.

On motion of Levi Pierce, esquire, of counsel for plaintiffs. It is ordered by the court that this cause be discontinued.

SUPREME COURT OF THE STATE OF LOUISIANA, *E. D.*

I hereby certify the foregoing to be a true extract from the record of the proceedings had in the first judicial district court of the State of Louisiana, in a certain suit wherein the City Bank of New Orleans was plaintiff, and Thomas Banks et al. were defendants, which record is in the files of this court under No. 5,871.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at the city of New Orleans, this sixteenth day of December, 1845.

EUGENE LASERE, *Clerk.*

We consent to the above extract from the record being filed in the U. S. circuit court, in the case of Conrad, assignee, vs. Banks et al.

BENJAMIN & MICOU, *Att'ys for Conrad.*
M. M. COHEN, *for Banks, Allan, et al.*

In the spring of 1842, the Union Bank having previously instituted a suit against Thomas Banks, on sundry mortgages to a very large amount, and covering property of a very great value, Mr. Banks called on me with a view of making, if possible, some arrangement with the bank whereby the sacrifice, consequent upon a forced sale, at that unfavorable time, of such a mass of property in block, might be avoided. I advised Mr. Banks to make out a statement of his debts, and an estimate of his property, which he did, and the result of it showed him to be worth a considerable amount, my impression is upwards of $200,000, beyond his liabilities. This occurred some time in the month of June, 1842.

As his debts to the different banks formed by far the heaviest portion of his debts, (his liabilities to individuals being comparatively trifling,) I then advised him to address a communication to each of the banks to which he was indebted, to the effect that he would place his property in the hands of two trustees, of which C. Adams, jr., president of the Union Bank, should be one, to whom he would pass titles to his property, and *whom* should, in the month of January following, sell the same at public auction, on certain terms of credit; the banks agreeing to receive the proceeds in the order of their respective mortgages, and the balance to be paid over to Mr. Banks. I wrote the proposition for him, and I find his letter to the Union Bank on the subject is dated June 14th, 1842, and have no doubt but that his communications to the other banks bear the same dates, as they were written about the same time. The proposition was accepted by the Union Bank, but re-

jected by the Bank of Louisiana. I do not know what action was had in the matter by the other banks, except the Canal, whose president informed me that the board had either accepted, or would accept it. Finding that the Bank of Louisiana, a mortgage creditor to a very large amount, had rejected his proposition, Mr. Banks then told me, that rather than have his property sacrificed at sheriff's sale, as he thought it would inevitably be, if sold at that time and in block, he would put it all in bankruptcy; and asked whether the bankrupt court would not order it to be sold in separate pieces, and on time, stating to me that there would be a handsome fortune left to him if that course were adopted; and if the other mode was adopted, that there would be nothing left for him.

Previous to making the proposition above referred to, Mr. C. Adams, jr., conferred, at the request of Mr. Banks and myself, on the subject, consented to act as trustees, and Mr. Banks asked me to act as the other. Mr. Adams and myself examined the list of property and debts, and it was then our impression that a balance would result in favor of Mr. Banks, from the sale of his property, as proposed by him. In all my conversation with Mr. Banks, relating to his going into bankruptcy, he seemed to be actuated by a desire to save his property from sacrifice, and expressed his conviction that his property would much more than pay his debts. He continued under that belief for a considerable time after the filing of his schedule, and up to the first sale which was made of his property. I am confident that he entertained this belief in good faith, not only from all that he told me in conversation on the subject, but from the fact that, up to the first sale, he took a very deep interest in the proceedings; seemed very desirous of avoiding every possible expense, and exerted himself to procure the cheapest estimates of work and repairs which were necessary on some of the property, and gave to some of the work his personal attention; after that time, he appeared greatly disappointed, and told me that if the balance of his property would sell no better than that which he had just sold, he would not have one dollar left, and began to despair even of paying his debts. From that time his interest in the business was greatly diminished. He had previously been in the habit of advising me as to the mode of dividing the various properties, and in all matters which he considered would have the effect of enhancing the value. He told me that it mattered very little, he thought, how it was sold, as he did not believe that it would more than pay his debts, if it did that. I endeavored to encourage him, though I doubted myself whether it would pay his debts; though I did not have any idea, until the Arcade was sold, that it would leave him so far behindhand.

From the frequent and unreserved conversations which I had with Mr. Banks, prior to his bankruptcy, as his counsel, in relation to his affairs, his property, and his debts, and from what has occurred since his bankruptcy, I have no hesitation in declaring, that he considered, at the time of filing his schedule in bankruptcy, that the property surrendered by him would more than pay his debts; and that the principal

motive of his seeking relief from the bankrupt court, was to shield his property from the sacrifice which he thought would ensue from a sheriff's sale for cash, and in block, at the suit of his mortgage creditors; and that he continued in the belief for some length of time after his bankruptcy.

I have been asked to state what I know of Mr. Banks' business habits. I have been his counsel for several years, during which time I had full opportunity to judge of his habits of business, and the manner in which he transacted and conducted his affairs. I never knew a man, holding so large an amount of property, and having such heavy interest at stake, so loose and so utterly void of system as Mr. Banks. I never knew him to keep books, except a small memorandum book written in pencil, which I have occasionally seen in his hands, and which, I believe, he was in the habit of carrying about him in his pocket. I never knew him to have any office, or to employ a clerk. He appeared to transact all his business in the streets, and to carry his papers about with him in his hat; and I have often expressed to him my surprise at the loose mode he had of managing his affairs, and my conviction that he must have lost considerable by not employing a clerk or agent to keep books, or some connected chain of his business.

It is proper that I should add, that the debts, of which he furnished a memorandum to Mr. Adams and myself, we afterwards found to be larger than Mr. Banks thought them to be, from the fact that, in two or three instances, he owed a large amount of interest, which induced Mr. Adams then to doubt whether his property would pay his debts, *that* he thought he did; but, at the same time, there were several small pieces of property which had not been taken into calculation. Before the sale of any of his property, a short time after my appointment as assignee, I called on the president of the Canal Bank, informing him that unless I went to the expense of erecting fire-walls in the arcade, I could not get it insured, and that I would not go to that expense without consulting the bank, as it held the first mortgage on the property. He replied to me, that the bank had very little or no interest in having the walls built, as the naked property, even if the buildings should be burned down, would pay the debt of the bank. The property afterwards did not sell for enough to pay that bank's first mortgage. I have stated this fact for the purpose of shewing that the estimate *of* Mr. Banks had placed on his property may have been greater than it was really worth; but that the amount for which it sold generally, was much less than was generally believed it would sell for.

Signed, F. B. CONRAD.

We agree that the above five pages, being the evidence of F. B. Conrad in the case of the City Bank vs. T. Banks, be filed in the United States circuit court in Conrad, assignee, vs. Banks et als.

BENJAMIN & MICOU,
Of counsel for Conrad.
M. M. COHEN,
For Banks, Allan, et als.

And afterwards, to wit, on the sixteenth of February, A. D. 1846, the defendants, by their solicitors, filed their plea of prescription herein, in the words and figures following, to wit:

CONRAD, assignee,
vs. } In chancery.
BANKS ET ALS.

5th circuit, district of Louisiana.

Defendants file in this case the plea of the prescription of one year.

M. M. COHEN,
For Banks, Robertson, and Allan.
R. HUNT,
For Wells and ux. and Forgay.

And afterwards, to wit, on said sixteenth day of February, A. D. 1846, the following order was entered of record:

This cause, coming on to be heard this day, was opened on the part of the complainant, by R. H. Wild, esq.; whereupon, the further trial thereof was continued until to-morrow morning, the 17th instant, at 10 o'clock, A. M.

And afterwards, to wit, on said seventeenth day of February, A. D. 1846, the following order was entered of record herein:

The argument of this cause being resumed this day, was, by consent of counsel, continued until to-morrow morning.

And afterwards, to wit, on the eighteenth day of February, A. D. 1846, the following order was entered of record herein:

On motion of the solicitors of respondents, Banks, Allan, and Forgay, to wit, on motion of M. M. Cohen and R. Hunt, esq'rs, solicitors for Banks, Allan, and Forgay, and with the consent of complainant's solicitors, it is ordered, that said defendants be now allowed to make oath to their answers, which was administered to them accordingly.

And afterwards, to wit, on the nineteenth February, A. D. 1846, the following order was entered of record herein, to wit: On the trial of this case, complainant's counsel argued, that defendants not having sworn to their answers, the same amounted only to a formal general denial. The defendants' counsel thereupon tendered the oaths of defendants, if complainants required it; adding, that the only reasons why the answers were not sworn to was, that the bill did not require it, and omitted the words of the rule of the Supreme Court. Thereupon complainants required said oath, and defendants, with their leave and that of the court, amended said answers by swearing thereto.

And afterwards, to wit, on the same day, the following order was entered of record herein: The defendants having amended their answers by swearing to them, it is ordered, that the complainants be allowed to refile their replication to defendants' answer as amended.

And on the same day, to wit, the said nineteenth day of February, A. D. 1846, the following order was entered of record herein, to wit:

The argument of this cause having been resumed this morning, was, on motion, continued until to-morrow morning, the 20th instant.

And on the same day, to wit, on the 19th day of February, 1846, the complainant filed his replication to the defendants' answers as amended, in the words and figures following, to wit:

In the fifth circuit court of the United States for the district of Louisiana.

F. B. CONRAD, assignee,
vs.
WELLS and WIFE, FORGAY, BANKS, and al.

The replication of Francis B. Conrad, assignee, to the several answers of Ann Fogarty, otherwise called Ann Wells, Edmond W. Wells, Thomas Banks, Samuel L. Forgay, William Whitla, William Robertson, f. m. c., and George Allan. This repliant, saving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said several answers of the defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall award; and humbly prays, as in and by his said bill he hath already prayed, &c.

RICHARD H. WILDE,
Complainant's Solicitor.

And afterwards, to wit, on the 20th of February, A. D. 1846, the following order of submission was entered of record herein: The argument of this cause being resumed this morning before the court, was concluded on the part of complainants by R. H. Wilde, esq., solicitor for said complainant. Whereupon the court took said cause under advisement.

And afterwards, to wit, on the thirteenth day of April, 1846, the following final decree was rendered by the court in this cause, to wit:

F. B. CONRAD, assignee,
vs.
ANN FOGARTTY, and others. } In equity.

This cause came on to be heard on the bill, answer, exhibits, and proofs adduced, and was argued by counsel; and, after duly considering the matters in controversy, it is ordered, adjudged, and decreed, first, that the gratuitous donation from Thomas Banks to Ann Foggarty, otherwise called Ann Wells, of a certain piece of ground, and slaves, specified in the complainant's bill, and particularly described in exhibit B, filed therewith, is fraudulent and void, as against the creditors of the said Thomas Banks; that the same belonged to said Banks at the time of his bankruptcy, and became, by force of the bankrupt act, vested in the complainant, as assignee; that the pretended sale from the said Ann Fogarty, otherwise called Ann Wells, to the said Samuel L. Forgay, a

defendant in said bill, of a certain piece of land and slaves, and particularly described in exhibit [C], in the said bill mentioned and filed therewith, is feigned, simulated, and fraudulent, as against the creditors of Thomas Banks; that the land and slaves belonged to Thomas Banks at the time of his bankruptcy, and became vested in the complainant as assignee; that the notarial acts, marked exhibit B and exhibit C, are decreed null and void, and hereby cancelled and annulled, and decreed to be of no effect; and the land, with the improvements thereon, and the slaves, are hereby ordered to be delivered over to the complainant, to be disposed of for the benefit of the creditors of said Banks.

Secondly. That the pretended sales from Banks to Whitla, a defendant in the bill, and from said Whitla to Allan, also a defendant, of the land described in exhibit H and L, referred to in the bill, are fraudulent, null, and void; and the said land is decreed to have belonged to said Banks at the time of his bankruptcy, and to have vested in his assignee for the benefit of his creditors; and the said notarial acts marked as exhibits H and L, are hereby cancelled and annulled.

Thirdly. That the pretended sale from Thomas Banks to William Robertson, a free man of color, also a defendant in this cause, of a certain piece of ground, with the improvements thereon, situate in suburb Delord, and particularly described in the act marked exhibit [G], filed with and referred to in the bill, be declared simulated, fraudulent, null and void; that the said ground be adjudged to have been the property of Banks at the time of his bankruptcy, and as such vested in his assignee for the benefit of his creditors. The said act, marked and referred to as exhibit G, is therefore hereby declared null and void, and the said ground ordered to be delivered to the complainant as assignee.

Fourthly. That the pretended sale from the said Thomas Banks to George Allan of a square of ground in fauxbourg Livaudais, and particularly described in the act marked exhibit K, be declared simulated, fraudulent, null and void, and the said square to have been at the time of his bankruptcy the property of the said Banks, and as such vested in his assignee for the benefit of his creditors. The said act marked exhibit K is, therefore, null and void; and the said square of ground ordered to be delivered to the complainant, as assignee.

Fifthly. That Edmund W. Wells do pay over to the said complainant the sum of eleven thousand dollars, ($11,000,) by him confessed in his answer to have been received by him from Thomas Banks, (same having been received in fraud of the creditors of said Banks;) and that the complainant do have execution for the several matters aforesaid, in conformity with law, and the practice prescribed by the rules of the Supreme Court of the United States.

And it is further ordered, adjudged, and decreed, that the master do enquire and report the rents and profits of the house and lot, and of the slaves, described in exhibits B and C, from the filing of this bill to the time of delivering up the property, or date of the report; embracing the value of the said slaves respectively, their monthly hire, the annual value of the lot while unimproved and after its improvement, and the

length of time they were severally in the possession of said Wells and wife, and of the said Samuel L. Forgay. That the master do also enquire and report the annual value, rents, and profits of the square of ground in fauxbourg Livaudais, in exhibit K, from the filing of the bill in this case up to the time of delivering up the property, or date of the report, and also the rents and profits, hire or income, of the said several pieces of ground and improvements, and of the slaves aforesaid, from the dates of the several notarial acts, whereby the same were attempted to be fraudulently conveyed, marked as exhibits B, C, G, H, I, and K, aforesaid, up to the time of the delivery of the property therein mentioned, or to the date of such report; and that he do further enquire and report the amount of money, and of notes and other securities for money received by said George Allan from Thomas Banks, in fraud of his creditors, and contrary to the provisions of the bankrupt law, as charged in the complainant's bill, and the fact of such receipt admitted in said Allan's answer, but the fraudulent intent denied; that an account thereof be taken, with a detailed statement of sums, and the dates when the same were severally received; reserving to the said George Allan the right of proving any *bona fide* debt or claim he may have, or may have had, against Thomas Banks, at the time of such receipt of notes or money, and of proving that any receipt or payment by him alleged in his defence was made, had, or transacted with the said Banks in good faith, and not contrary with the provisions of the bankrupt law; the said complainant being at liberty also to introduce contrary evidence; and both the said complainant and the said George Allan being allowed to examine his adversary on interrogatories if he thinks proper; but this order is not to be construed to admit in evidence before the master the testimony of Thomas Banks, or any of the other co-defendants of the said Allan.

And so much of the said bill, as contains or relates to matters hereby referred to the master for a report, is retained for further decree in the premises; and so much of the said bill as is not now, nor has been heretofore, adjudged or decreed upon, and which is not above retained for the purposes aforesaid, be dismissed without prejudice; and that the said defendants do pay the costs.

Decree signed April 20, 1846.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 28th day of April, A. D. 1846, came the defendants, S. L. Forgay and Eliza Ann Fogarty, wife of E. W. Wells, and filed in the clerk's office of said court their petition, praying an appeal from the decree rendered in this cause by said court, which petition is in the words and figures following, to wit:

F. B. CONRAD, assignee of T. Banks,
vs.
Samuel L. Forgay et als. } In equity.

The petition of S. L. Forgay, and of Eliza Ann Wells, wife of E. W. Wells, by him duly authorized and assisted herein, respectfully

shews, that they are advised and believe there is error in the judgment pronounced in this case by the circuit court, and that they are thereby aggrieved.

Petitioners therefore pray that a suspensive appeal may be allowed them to the Supreme Court of the United States, on their giving bond, in such sum as the court may direct, according to law.

R. HUNT, *for petitioner.*

And afterwards, to wit, on the said twenty-eighth day of April, A. D. 1846, the following order was entered of record in this cause by said court, granting the defendants, Samuel L. Forgay, and Eliza Ann Fogarty, wife of E. W. Wells, an appeal from the final decree heretofore pronounced in this cause to the Supreme Court of the United States, to wit:

The defendants, Samuel L. Forgay, and Eliza Ann Fogarty, wife of E. W. Wells, feeling aggrieved at the final decree rendered in this cause on the thirteenth day of April, A. D. 1846, and on filing their petition, praying an appeal therefrom to the Supreme Court of the United States, returnable the first Monday in December, A. D. 1846, it is ordered that an appeal, superseding the execution of said decree, be, and the same is hereby granted said defendants, Samuel L. Forgay, and E. A. Wells, from said final decree, upon said defendants, Samuel L. Forgay, and E. A. Wells, wife of E. W. Wells, entering into bond in favor of said complainant, F. B. Conrad, assignee, in the penal sum of five thousand dollars, with James Jamieson and Robert J. Seaton, their sureties, conditioned to pay to said complainant all such damages as may result to him in case it should be decided by the Supreme Court of the United States that said appeal was wrongfully obtained.

And afterwards, to wit, on the twenty-ninth day of April, 1846, the defendants executed and filed their appeal bond in said court, which is as follows, to wit:

Know all men by these presents, that we, Samuel L. Forgay, and Eliza Ann Fogarty, wife of E. W. Wells, as principal, and James Jamieson and Robert Seaton are held and firmly bound, jointly and severally, unto Francis B. Conrad, assignee of Thomas Banks, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Francis B. Conrad, assignee of Thomas Banks, his heirs, executors, administrators and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-ninth day of April, in the year of our Lord eighteen hundred and forty six.

Whereas Samuel L. Forgay, and Eliza Ann Fogarty, wife of E. W. Wells, have presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying a suspensive appeal from a certain final decree, rendered on the 13th day of April, A. D. 1846, and enrolled

and signed on the 20th day of April, 1846, in a certain cause lately determined in the circuit court of the United States in and for the fifth circuit and district of Louisiana, wherein F. B. Conrad, assignee of Thomas Banks, is complainant, and said Samuel L. Forgay, E. A. Wells, wife of E. W. Wells, and others, are defendants, to the Supreme Court of the United States, returnable on the first Monday in December, A. D. 1846.

Now, the condition of the above obligation is, that if we, the above bounden Samuel L. Forgay and Eliza Ann Fogarty, wife of E. W. Wells, will well and truly pay to the said F. B. Conrad, assignee of Thomas Banks, the defendants in said appeal, all such damages as said defendants may recover against us, in case it should be decided that the said appeal was wrongfully obtained, and the final decree of said circuit court affirmed, then said obligation to be null, otherwise to be in full force and virtue.

SAMUEL L. FORGAY, [SEAL.]
SAM. JAMIESON, [SEAL.]
E. A. WELLS,
Pr. R. HUNT, *att'y & sol.*, [SEAL.]
ROBERT SEATON. [SEAL.]

Signed, and sealed, and delivered, in presence of F. N. HARALSON, deputy clerk of the circuit court of the United States for the district of Louisiana.

FRANCIS B. CONRAD, assignee of Thomas Banks,
vs.
ANN FOGARTY et al.

Circuit court of the United States, in and for the fifth circuit and district of Louisiana.

I, Edmund Randolph, clerk of the court aforesaid, do hereby certify, that the within and foregoing three hundred and seventy-nine and half pages contain a true and complete transcript of the record in the above entitled cause, embracing all the pleadings, final decree, and exhibits, proofs, and depositions, adduced on the hearings from the original record of said cause now on file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at New Orleans, in the district of [L. S.] Louisiana, this 29th day of August, A. D. 1846, and 71st year of the American independence.

Attest:

ED. RANDOLPH, *Clerk.*
By F. N. HARALSON,
Dep'y Clerk.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

I, Theodore H. McCaleb, district judge of the United States, in and for the district aforesaid, and one of the judges of the circuit court in